

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Clifton B. Newman, Circuit Court Judge

RECEIVED

JUN 10 2013

Case No.: 2010-CP-40-06562

S.C. SUPREME COURT

Bruce Wilson, #192733,.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Petitioner Bruce Wilson, #192733, hereby appeals the Order of the Honorable Clifton B. Newman, signed on May 9, 2013, which denies post-conviction relief to Petitioner. The undersigned counsel for Petitioner received notice of entry of the order on or about May 22, 2013. A copy of the Order on appeal is attached hereto.

**EXPLANATION OF GROUNDS FOR APPEAL
PURSUANT TO SCACR 243 (c)**

SCACR 243(c) directs that a petitioner inform the court at the time of the notice of appeal if a post-conviction relief action is barred as successive or untimely under the statute of limitations. Petitioner herein furnishes a brief explanation of the grounds for this appeal pursuant to the appellate rule.

On January 5, 2006, Petitioner pled guilty to three counts of Armed Robbery and was sentenced to twenty-three years imprisonment on each charge, all running concurrently. No direct appeal was filed.

Petitioner filed his first application for post-conviction relief on May 23, 2006. This initial PCR action alleged ineffective assistance of counsel. This was based on trial counsel's failure to file suppression motions on Petitioner's statement given after arrest and counsel's failure to challenge the adequacy of the photographic lineup that identified Petitioner as the guilty party. After an evidentiary hearing before the Honorable James C. Williams, the action was denied and dismissed with prejudice by Judge William's Order of September 18, 2007. No appeal was taken on this post-conviction relief action. Petitioner filed a second PCR application on September 21, 2010.

Petitioner's second PCR application stated that the claim for relief was based on newly-discovered evidence. Briefly stated, Petitioner argued that the plea court lacked subject matter jurisdiction to accept his plea, because Petitioner had requested a preliminary hearing at the time of his arrest. As the preliminary hearing had never been conducted, jurisdiction remained with the magistrate before whom the preliminary hearing had been requested. Respondent filed a Return and Motion to Dismiss the application as successive and beyond the statute of limitations. The Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Petitioner an opportunity to submit objections to the dismissal. Upon receiving Petitioner's written objections, Judge Barber directed that counsel be appointed for Petitioner and that Petitioner be given a hearing on his objections.

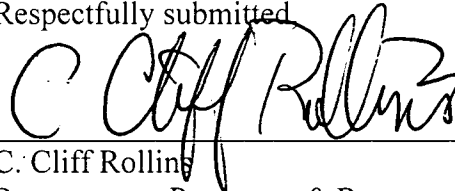
Accordingly, the undersigned was appointed as counsel for Petitioner. After counsel's appointment, the Application for Post-Conviction Relief was amended to include a claim for ineffective assistance of counsel relating to Petitioner's first PCR action; specifically, the failure of original PCR counsel to file for appellate review of the decision on the first PCR action. Based on this, Petitioner's counsel in the second PCR action argued that Petitioner was entitled to a belated appeal of the original PCR action pursuant to the holding of Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) and Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The matter was set for a hearing before the Honorable Clifton B. Newman on October 18, 2012. Pursuant to this hearing, Judge Newman issued an Order of February 13, 2013. The Order denied Petitioner's subject matter jurisdiction argument as being without merit, and that further, Petitioner had waived his right to a preliminary hearing at his sentencing hearing. Regarding Petitioner's request for a belated Austin appeal, the court noted that, while Odom holds that the statute of limitations does not apply to a claim for belated appeal, the Petitioner "failed to exercise reasonable diligence in pursuing relief and made a knowing and intelligent waiver of his right to appellate review."

Petitioner filed a Motion to Reconsider under SCRCP Rule 59(e) on February 26, 2013, which was heard by Judge Newman on April 2, 2013. Pursuant to that hearing, Judge Newman issued an Order of May 9, 2013 which was filed on May 20, 2013. This Order confirmed the February 13, 2013 Order's denial of a belated Austin appeal for failure to exercise reasonable diligence.

Petitioner appeals on the grounds that this ruling on his request for a belated Austin appeal is in error. The Odom court explained that under the PCR rules, an applicant is entitled to "one full bite at the apple," which includes the right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal. Petitioner asserts that the record in this matter will show that it is uncontested that (1) he never received an appellate review of his initial PCR application; and (2) that Plaintiff's original PCR counsel admitted at hearing that this was likely due to mistake on counsel's part; and (3) that because of a failure of Petitioner's original PCR counsel to communicate with Petitioner, Petitioner was unaware that his expressed wish for appellate review had been disregarded, and that Petitioner at all times was moving diligently to protect and assert his right to appeal.

Respectfully submitted



C. Cliff Rollins
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(803) 779-0016 facsimile

June 6, 2013

ATTORNEY FOR APPLICANT/PETITIONER

Other Counsel of Record:
Megan E. Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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

FORM 4

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NUMBER: 2010CP4006562

MAY 28 2013

Bruce #192733 Wilson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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 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
		\$
		\$
		\$

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 _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21ST day of May, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Bruce #192733 Wilson
C. Clifford Rollins
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Daniel Corney
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Bruce Wilson, #192733,)
Applicant,)

2010-CP-40-06562

ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER UNDER
RULE 59(e), SCRPC

vs.)

State of South Carolina,)
Respondent.)

2013 MAY 20 AM 9:33
JENNIFER W. FISHER
CLERK P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before this Court by way of Applicant's "Motion to Reconsider Under Rule 59(e), SCRPC," submitted by counsel for Applicant on February 26, 2013.

I. Procedural History

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted during the April and July 2005 terms of the Richland Grand Jury for four counts of Armed Robbery (2005-GS-40-0024, -0025, -0026, -0056). He was represented by Katherine Hudgins, Esquire, on the charges. On January 5, 2006, Applicant pled guilty to three counts of Armed Robbery as indicted before the Honorable James W. Johnson, Jr., and was sentenced to twenty-three years imprisonment on each charge, all to run concurrently. The remaining charge (-0025) was dismissed by the State subsequent to the plea. No direct appeal was filed.

Applicant thereafter filed his first application for post-conviction relief on May 23, 2006 (2006-CP-40-2981). Charlie J. Johnson, Jr., Esquire, represented Applicant on this action. An evidentiary hearing into the matter was convened August 1, 2007, before the Honorable James C. Williams. Applicant was present and testified at the hearing. By order filed September 18, 2007,

Judge Williams denied and dismissed the action with prejudice. Applicant did not appeal the denial or dismissal of this post-conviction relief action.

Applicant filed a second application, which is the subject of this action, on September 21, 2010. Respondent filed a Return and Motion to Dismiss the application on September 30, 2011, requesting the action be summarily dismissed as successive and beyond the statute of limitations. Pursuant to this motion, the Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Applicant thirty days to submit his objections to the dismissal in writing. Upon receipt of Applicant's responses, Judge Barber requested the matter be set for hearing on Applicant's claim on newly-discovered evidence.

A hearing was convened into the matter before this Court on Thursday, October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Katherine Hudgins, Esquire, and former post-conviction relief counsel, Charlie J. Johnson, Jr., Esquire. By order filed February 19, 2013, this Court denied Applicant's request for relief with prejudice.

Applicant, by way of his counsel, filed a "Motion to Reconsider Under Rule 59(e), SCRPC," on February 26, 2013. By written Return filed on March 7, 2013, Respondent requested that Applicant's motion be dismissed. A hearing on this motion convened on April 2, 2013, at the Richland County Courthouse. Applicant was present and represent by counsel C. Cliff Rollins, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's office.

II. Findings of Fact and Conclusions of Law

In his motion to reconsider, Applicant asserted that this Court incorrectly denied Applicant a belated appeal of his initial post-conviction relief action (2006-CP-40-2981) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (S.C. 1991). Applicant asserted that he did not make a “knowing and voluntary waiver of his right to such appellate review” and this Court incorrectly denied him a belated appellate review of his initial post-conviction relief action. See Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (S.C. 1999). At the hearing on this motion, Applicant testified in support of his motion. He testified that he did commit the armed robberies and that he pled guilty to avoid a harsher punishment he^w could have received if convicted at trial. Applicant testified that he received notification that his prior post-conviction relief action was dismissed in “late 2008 or early 2009” and that he filed this application on September 21, 2010, seeking appellate review of his first action, amongst other claims.

Respondent, through its written Return and at the motion hearing, argued that this Court’s Order of Dismissal contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRCF. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Additionally, Respondent argued that Applicant’s delay of at least a year and a half before filing his second application for post-conviction relief to seek appellate review of his initial application constitutes a waiver of his appellate rights. Respondent argued that this applicant should not be considered timely under S.C. Code Ann. §17-27-45(C). S.C. Code Ann. §17-27-45(C) states:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or *after the date when the facts could have been ascertained by the exercise of reasonable diligence.*

(Emphasis added.) Respondent argues that the more than eighteen month delay between hearing of the denial of his first post-conviction relief action and the filing of this action exceeds the exercise of reasonable diligence and that this application must be dismissed as untimely.

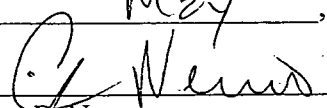
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting documents, this Court is not persuaded to alter or amend the judgment. This Court further finds that its Order of Dismissal, entered on February 13, 2013 and filed on February 20, 2013, contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the post-conviction relief hearing. Therefore, Applicant's "Motion to Reconsider Under Rule 59(e), SCRPC" is **DENIED**.

This Court notes that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRPC, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 9th day of May, 2013.


CLIFTON B. NEWMAN
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4006562

Bruce Wilson, #192733

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
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- 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 _____

RICHLAND COUNTY
 FILED
 2013 FEB 20 AM 11:45
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

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.

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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of Feb., 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Bruce Wilson, #192733 C. Clifford Rollins
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Daniel Corney
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Bruce Wilson, # 192733,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-06562

ORDER OF DISMISSAL

JEANETTE W. MBRIDGE
 C.C.P. & G.S.
 2013 FEB 19 AM 10:38
 RICHLAND COUNTY
 FILED

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed September 21, 2010. The state filed a Return and Motion to Dismiss the application on September 30, 2011, requesting the action be summarily dismissed. Pursuant to this motion, the Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Applicant thirty (30) days to submit his objections to the dismissal in writing. Upon receipt of Applicant's responses, Judge Barber requested the matter be set for hearing on Applicant's claim on newly-discovered evidence.

A hearing was convened into the matter before this Court on Thursday, October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Katherine Hudgins, Esquire, and former PCR counsel, Charlie J. Johnson, Jr., Esquire. Before this Court were copies of the records of the Richland County Clerk of Court, the relevant records of Applicant's conviction, and the records of Applicant's previous PCR action.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted at the April and July 2005 terms of the Richland Grand Jury for four (4) counts of Armed Robbery (2005-GS-40-0024, -0025, -0026, -0056). He was represented by Katherine Hudgins, Esquire, on the charge(s). On January 5, 2006, Applicant pled guilty to three counts of Armed Robbery as indicted before the Honorable James W. Johnson, Jr., and was sentenced to twenty-three (23) years imprisonment on each charge, all to run concurrently. The remaining charge (-0025) was *nolle prossed* by the state subsequent to the plea. No direct appeal was filed.

Applicant thereafter filed an application for PCR on May 23, 2006 (2006-CP-40-2981). He was represented by Charlie J. Johnson, Jr., Esquire, on the action. An evidentiary hearing into the matter was convened August 1, 2007, before the Honorable James C. Williams. Applicant was present and testified at the hearing. By order filed September 18, 2007, Judge Williams denied and dismissed the action with prejudice.

In the current action, Applicant alleges he is being held in custody unlawfully based upon the following:

- 1) **The asserted grounds for the instant Application for Post-Conviction Relief are based on newly-discovered evidence.**
- 2) **The newly-discovered evidence claim relates to Applicant's assertion that the State failed to establish jurisdiction over Applicant sufficient to convict him pursuant to Indictments 2005-GS-40-24, 2005-GS-40-25, and 2005-GS-40-56, by reason of the State's failure to provide him with a preliminary hearing prior to these indictments.**

- 3) Therefore, the Application for Post-Conviction Relief challenges Applicant's original conviction under the above-referenced indictments.
- 4) To this claim, Applicant amends and adds his assertion that the newly-discovered evidence claim also relates to his original Application for Post-Conviction Relief, filed in 2007, which was based on ineffective assistance of counsel.
- 5) Facts supporting this claim include the fact that Applicant's appointed counsel for his original PCR claim, failed to appeal the initial decision on Applicant's first PCR claim, failed to inform the applicant of his failure to appeal, and in fact failed to inform the applicant that the attorney was no longer employed with the attorney's original law office, limiting the applicant's contact with his appointed counsel and preventing applicant from being made aware of the true status of his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Lack of Subject Matter Jurisdiction

Applicant first contends he is in possession of newly-discovered evidence which proves the plea court was without subject matter jurisdiction to accept his 2006 guilty plea. Applicant contends his discovery of the evidence supporting this allegation is sufficient to overcome the untimely and successive nature of the current PCR application.

At the PCR hearing, Applicant testified he was originally represented on the charges by public defender "Mel Longshore"¹, Esquire, but was appointed Kat Hudgins as his attorney after the PD's office was conflicted out of its appointment. Applicant stated prior to being relieved, Longshore requested a preliminary hearing be held on all four of the Armed Robbery arrest warrants, the first being filed December 28, 2004, and the second on December 30, 2004. Upon Hudgins taking over the appointment, Applicant said, he asked her about being brought before the Court for the preliminary hearing at which time she informed him he had been true bill indicted by the grand jury. Applicant alleged counsel said because of that, he would not get a preliminary hearing. Applicant testified he was not aware a hearing had ever been scheduled until after his prior PCR hearing in 2010, but upon receipt of a packet from the Richland County Clerk of Court he found out a preliminary hearing had been scheduled in March of 2005, but continued. Applicant stated he did not raise this issue in his prior PCR because he was not aware of it at the time. He finished by stating his due process rights were violated in not being afforded a preliminary hearing as the plea court was without jurisdiction to accept his subsequent guilty plea.

Counsel testified she was able to review her file from Applicant's case prior to the hearing and noted she was appointed in April of 2005 to represent Applicant, at which time the grand jury had already returned true billed indictments charging Applicant with four (4) counts of Armed Robbery. She went on to say once the grand jury indicts a defendant, they are no longer entitled to a preliminary hearing on the charges. Counsel said she never raised a motion or objection prior to his plea hearing based on the failure to afford him with a preliminary hearing as he never brought it to her attention one had been requested.

¹ After a review of the current members of the S.C. Bar, it appears there is no attorney by the name of "Mel" Longshore. Rather, Ned Longshore, Esquire, is a former Richland County assistant public defender who worked in that capacity at the time of Applicant's plea.

Charlie Johnson, Applicant's former PCR counsel for the 2006 action, testified he didn't raise any allegations related to the lack of a preliminary hearing or lack of subject matter jurisdiction in Applicant's prior PCR action because he was not aware of it.

After thorough review of the record and testimony presented, this Court finds Applicant has failed to satisfy his burden in proving this allegation. First, this Court would note Applicant's core contention is wholly without merit as any failure to afford Applicant with a preliminary hearing does not affect the circuit court's jurisdiction to accept his guilty plea. "[P]resentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court." State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, fn.6 (2005). Id. "The indictment is a notice document" and the sufficiency of such is a wholly distinct concept from the circuit court's ability to hear cases as "circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 102, 610 S.E.2d at 500. Applicant's guilty plea arose from criminal charges following Applicant's arrest in Richland County. Whether the indictments were deficient is inconsequential to the circuit court's subject matter jurisdiction to accept Applicant's guilty plea. Accordingly, this claim is without merit.

Further, the record and testimony before this Court indicate Applicant waived his right to such a preliminary hearing through his conduct before the plea court. Any allegation that the true billed indictments were erroneous as the grand jury was without jurisdiction to issue them would have properly been raised by Applicant prior to entry of his plea. Applicant's silence on the issue at his plea hearing and his subsequent entry of the guilty plea serve as a waiver of his right to preliminary hearing on the matter. See Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981) (Plea negotiations and silence before the trial court concerning a desire for preliminary hearing constitute evidence of waiver of such a hearing). At the time of his plea, Applicant was well

aware he had requested a preliminary hearing from Longshore (if he did in fact make such a request as he now alleges he did), and, based on his PCR testimony, Applicant knew Longshore filed the requests for preliminary hearing. Therefore, his failure to challenge the indictments or otherwise make any mention of preliminary hearing at the plea hearing, along with his subsequent entry of the plea, serve as a waiver of his right to such a hearing.

Additionally, the claim is without merit as Applicant was true bill indicted by the grand jury prior to the convening of the preliminary hearing. Under Rule 2(b), SCRCrimP, a preliminary hearing "shall not be held...if the defendant is indicted by a grand jury...before the preliminary hearing is held." Further, "any delay in holding the preliminary hearing is not a ground for delay in prosecution of the case in the court of general sessions." State v. Hawkins, 310 S.C. 50, 55, 425 S.E.2d 50, 53 (Ct. App. 1992). Applicant's charges were true bill indicted by the Richland County Grand Jury on April 20, 2005, after the preliminary hearing was continued from its originally scheduled date of March 10, 2005. Therefore, Applicant was no longer entitled to a preliminary hearing on the charges after April 20, 2005.

Lastly, in the context of Strickland v. Washington, Applicant has failed to carry his burden in proving resulting prejudice from any alleged deficiency on counsel's part in this regard. The charges were ultimately presented to the Richland County Grand Jury where sufficient probable cause was found on each of the four (4) charges, as evidenced by the true bill indictments returned April 20, 2005. Therefore, this Court can find no reasonable probability that had counsel demanded such a preliminary hearing be held, the charges would have been dismissed by the presiding magistrate judge. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which...will often be so, that course should be

followed.” Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069 (1984). For all of the reasons stated above, this allegation is denied.

Failure to File Appeal.

Applicant also alleges PCR counsel was ineffective for failing to timely file an appeal of his prior application for post-conviction relief. Applicant testified he filed the previous PCR application in May of 2006, and was thereafter appointed PCR counsel for representation in the matter. When asked why there was a three (3) year delay between dismissal of the previous PCR action (September 18, 2007) and the filing of the current PCR action (September 21, 2010), Applicant stated he was never apprised of the court’s dismissal of the prior action by PCR counsel. Further, Applicant said, PCR counsel left the law firm he was working at and Applicant was therefore unable to locate PCR counsel to follow up on the status of the action. Applicant readily admitted he never asked PCR counsel to file an appeal of the PCR if it were denied, and stated he found out about the denial of his prior PCR action in 2009.

On cross-examination, Applicant again noted he was unable to ever speak with PCR counsel to ask the matter be appealed if denied and said his former law firm would not tell Applicant where PCR counsel worked thereafter. When inquired as to when he received a copy of the order dismissing the prior PCR action, Applicant said he received a copy of the order in “late 2008 or early 2009”.

PCR counsel testified he did not inform his clients that he would be leaving the law firm he had been working at prior to actually doing so. He stated his normal procedure is to file the notice of appeal for a PCR client upon receipt of the order of dismissal, regardless of whether the applicant actually requests an appeal or not, but said he failed to do so in this action. PCR counsel noted his failure to file the appeal was “not intentional” and said he “must have gotten

the paperwork mixed up". PCR counsel said if the appeal didn't get filed, it was his mistake, but agreed Applicant never asked that he file an appeal.

Based on the above, this Court finds Applicant is not entitled to a belated appeal of his prior PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Applicant failed to exercise reasonable diligence in pursuing relief and has made a knowing and intelligent waiver of his right to such appellate review after obtaining full knowledge of his appellate rights. While the Court in Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), held the statute of limitations does not apply to a claim for belated appeal, such a rule was imposed to "act as an applicant's final safeguard" to Applicant's right to appeal where he was unaware of his right to appeal until outside of the one (1) year directly following conviction.

In the current instance, Applicant readily concedes he received a copy of the order of dismissal in "late 2008" or "early 2009", which contains a paragraph in it clearly informing the applicant that he must file and serve a notice of appeal within thirty (30) days to secure appellate review, and specifically directing the applicant to Rule 243, SCACR, for the proper procedure to do so. With that information in mind and being fully aware thereafter of his right to appeal, Applicant waited until September 2010, more than a year after his receipt of the order in "early 2009", to file the current application requesting a belated appeal. The Uniform Post-Conviction Relief Act sets forth explicit restrictions to require applicants to timely file and diligently pursue relief. In particular, S.C. Code § 17-27-45(c) sets forth a one (1) year time limit for filing of an action when an applicant uncovers facts not previously known to him/her. That one year time limit is triggered by "the date of actual discovery" of the facts by Applicant, or the "date when the facts could have been ascertained by the exercise of reasonable diligence" by Applicant. This Court finds the current belated appeal cannot be granted as allowing such would contradict the

very purpose of these statutory time limitations. Applicant "actually discovered" he was entitled to an appeal of his previous PCR action in "early 2009". Therefore, he should have taken reasonable and diligent steps to secure such an appeal within the following one year time frame from his receipt of such information. Applicant failed to do so, filing the current action *at least* several months after the one year time frame had expired. Accordingly, the current request for a belated Austin appeal must be denied.

CONCLUSION

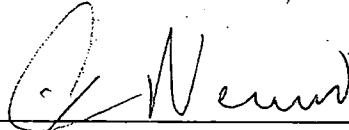
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of February, 2013.



CLIFTON B. NEWMAN
Presiding Judge
Fifth Judicial Circuit

Kingstree, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Clifton B. Newman, Circuit Court Judge

Case No.: 2010-CP-40-06562

Bruce Wilson, #192733,.....Petitioner,

v.

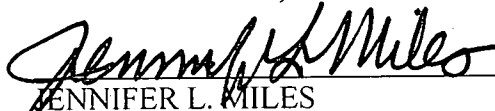
State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., counsel for Applicant/Petitioner Bruce Wilson, do hereby certify that I have this date served the foregoing Notice of Appeal, with attached Orders filed May 21, 2013 and February 20, 2013, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, addressed to the parties indicated below on this 6th day of June, 2013:

The Honorable Jeanette McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Megan E. Harrigan
Assistant Attorney General
Post Conviction Relief Section
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549


JENNIFER L. MILES

Legal Assistant to C. Cliff Rollins

June 6, 2013
Columbia, South Carolina.

**RICHARDSON
PLOWDEN**
ATTORNEYS AT LAW

COLUMBIA, P.O. Drawer 7788 • Columbia, SC 29202

Danielle Shearouse, Clerk
Supreme Court of South Carolina
PO Box 14330
Columbia, SC 29214

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ZIP 29201
011D11615066

June 6, 2013

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Bruce Wilson (SCDC #192733) v. State of South Carolina*
C/A No.: 2010-CP-40-06562
Our File No.: 095-534

Dear Mr. Shearouse:

Enclosed for filing is the Notice of Appeal of the Petitioner, Bruce Wilson, in the above-referenced case, along with a copy of the Orders appealed from and our Proof of Service. It is my understanding that we are exempt from the filing fee when filing on behalf of an inmate; if that is incorrect, please let me know.

By copy of this letter, we are serving this Notice of Appeal on the Clerk of Court for Richland County and counsel of record.

Should you have any questions regarding this matter, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.



C. Cliff Rollins

/jlm
Enclosures as Stated

cc: The Honorable Jeanette McBride (w/encl.)
Megan E. Harrigan, Esquire (w/encl.)
Mr. Bruce Wilson (w/encl.)

RECEIVED

JUN 10 2013

S.C. SUPREME COURT