IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Case No. 2019-CP-08-1608

JOHNNY LEE LUCAS ..... Appellant,
LEE LUCAS

vs.

THE STATE OF SOUTH CAROLINA ..... Respondent.

NOTICE OF APPEAL

Johnny Lee Lucas appeals the Order of the Honorable Jennifer B. McCoy, dated August 28, 2023. Appellant received written notice of entry of this Order on September 22, 2023.

October 16th, 2023

/s/ Johnny Lucas

Johnny L. Lucas #235656
Ridgeland Corr. Inst.
PO Box 2039
Ridgeland, SC 29936

Appellant, pro-se

Other Counsel of Record:

Danielle Dixon
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PO Box 11549
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STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Johnny Lee Lucas, #235656, Applicant, v. State of South Carolina, Respondent.	)	2019-CP-08-1608 **FINAL ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Johnny Lee Lucas (Applicant) on June 25, 2019. Respondent made its Return, requesting the application be summarily dismissed. After review of the record and pleadings, this Court agreed this application should be summarily dismissed and provisionally dismissed the action by way of a Conditional Order of Dismissal filed October 2, 2020, giving Applicant twenty days from the date of service of said Order to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service indicating Applicant was served the Conditional Order of Dismissal on December 1, 2020.

On November 12, 2020, Applicant filed with the Clerk of Court a Response in Opposition to the Conditional Order of Dismissal Becoming Final.[1] After review, this Court finds Applicant has failed to set forth a valid basis for an evidentiary hearing. In support of his claim that the statute of limitations and the doctrine against successiveness should not apply, Applicant cites to Garza v. Idaho, 139 S. Ct. 738 (2019), and asserts he could not have raised the issue of a belated appeal prior to the United States Supreme Court issuing this opinion. Applicant's reliance on

[1] Respondent did not submit a proposed final order of dismissal to this Court until August 20, 2023. Respondent has relayed to this Court that its delay in submitting a proposed final order of dismissal was due to turnover of attorneys in the office.

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CC: D. DIXON; JOHNNY LUCAS: 09/01/2023

Garza, however, is misplace. In Garza, the Supreme Court held the presumption of prejudice set forth in Roe v. Flores-Ortega, 528 U.S. 470 (2000), would apply even if the applicant had signed a plea agreement waiving his appellate rights. Unlike the defendant in Garza, Applicant did not plead guilty; rather, he proceeded to trial. Thus, there was no plea agreement that contained any type of appeal wavier, making Garza is inapplicable. Further, there is no allegation that a plea waiver was the basis for the first PCR court's[2] finding that Applicant was not entitled to a belated appeal. In fact, in the Order of Dismissal, the first PCR court found,

> This Court finds counsels' testimony more credible than Applicant's testimony. Both counsel testified they discussed the right of appeal with Applicant. Applicant was advised that a notice of intent to appeal would be filed on his behalf if he so requested. According to both counsel, Applicant stated he did not want to appeal. The allegation [related to a believed appeal] is dismissed.

(2000 PCR Or. 3). Garza simply does not set forth a new rule of law that would apply to Applicant's case or provide a basis for setting aside the statute of limitations or the rule against successive PCRs. Applicant's remaining allegations relate to alleged perjury at trial, the chain of custody, alleged issues with the indictment, and alleged issues with the fingerprint evidence used to convict Applicant. These are all issues that could have been raised in prior proceedings; thus, these allegations do not provide a basis for setting aside the statute of limitations or the rule against successive PCRs. Applicant has not set forth sufficient allegations to warrant a hearing; thus, this Court finds this application should be dismissed.

[Conclusion and signature page follows]

[2] The docket number for Applicant's first PCR action is 97-CP-08-458.

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IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for PCR is hereby **DENIED AND DISMISSED WITH PREJUDICE**. Should Applicant wish to procure appellate review, he must file and serve a notice of appeal within thirty days of this Order. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 28th day of August, 2023.

JENNIFER B. MCCOY
Ninth Judicial Circuit

Moncks Corner, South Carolina

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Explanation to show why this appeal should not be **Dismissed**, in accordance with SCACR 243:

After the Client is convicted and sentenced, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and if the client is indigent, assist the client in filing an appeal. In re Anonymous Member of the Bar, 303 S.C. 306, 307, 400 S.E.2d 483 (1991); see also Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)

To waive a direct appeal, a defendant must make a "knowing and intelligent" decision not to pursue the appeal. Davis v. State, 288 S.C. 290, 352 S.E.2d 60 (1986). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

All of the previous Courts has ruled that because the trial attorneys says that the Appellant said he didn't want to appeal that, that was enough to deny his previous applications, there were no determination made as to whether the alleged decision to not to appeal was "knowingly and intelligently made, as required by South Carolina's Law.

The only reason the PCR court did not grant any relief is because the "Court finds counsels' testimony more credible than Applicant's testimony". See page 2 of the Final Order. There's nothing in the record to show that any valid waiver was ever made not to appeal the issues raised in the trial of this matter.

In Roe v. Flores-Ortega, 528 U.S. 472, it states that "the question whether a defendant has made the requisite showing will turn on the facts of the particular case. Nonetheless, evidence that there were non-frivolous grounds for appeal or that the defendant promptly expressed a desire to appeal will often be highly relevant in making this determination".

Attorney Masty objected to the judge allowing the testimony of a prior crime being committed by the Appellant. See tr. trans. pg.146, lines 12-20. The judge denied the objection. Also, Attorney objected to the judge allowing testimony concerning the fingerprint evidence because the State had not establish a sufficient chain of custody of the fingerprint evidence.

None of the previous grounds stated are frivolous. The testimony concerning the fingerprint evidence was perjury, there was never any fingerprints found at this alleged crime scene.

Counsel objected to the introduction of the fingerprint evidence, the judge denied the objection, the issue was preserved in the records. See trans. pg. 171, lines 17- page 175, lines 1-8.

The Appellant promptly requested that his trial attorneys file a notice of appeal on his behalf at the conclusion of trial. As shown by the "letter" written to the Appellant by one of the trial attorneys. See exhibit - A of the application, the trial attorneys were under the impression that their representation of the Appellant ceased at the conclusion of trial. Exhibit - B is a letter advising the attorneys that the Appellant did wanted an appeal and it was their duty to file a notice of appeal on behalf of the Appellant.

There is so much inconsistencies in this matter, one is, the indictment in this case charges me with a crime allegedly committed at 1483 Old Chery Hill Road, see murder and burglary indictments associated with this case. At trial, without any new indictments, I was tried for crimes allegedly commited at 1428 Old Cherry Hill Road. See trial transcript, page 199, lines 10-20. The witness testified that she and her husband lived in that house for twenty-four years, she should know the correct address. As previously stated, there's no indictment charging me with a crime at that address.

The standards raised in Garza v. Idaho, 203 L.Ed.2d 77 (2019), should be applied to this case, Garza is newly discovered evidence, therefore, the issue of the statute of limitation or the application being successive should not be considered in this matter..

The South Carolina Supreme Court has ruled that the statute of limitation does not apply where an applicant does not "knowingly and voluntarily" waive his right to appeal his trial conviction and sentence. See Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

The Respondent argues that the Garza case should not apply because Garza pleaded guilty and the Appellant went to trial, nothing in the Garza case says that the standards raised raised by the United States Supreme Court applies only to guilty plea cases.

The Appellant Pray this Honorable Court grant him his one chance at a direct appeal, for this relief, the Appellant will forever Pray.

This 10th day of October, 2023

Signature

Johnny Lucas

LEAH GUERRY DUPREE
Clerk of Court, Berkeley County
P.O. Box 219
Moncks Corner, SC 29461-0219

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