August 21, 2012

Honorable Sreekanse,

Enclosed you'll find A Notice of Appeal for A Petition for writ of certiorari, along with A copy of the Final Order of dismissal And the conditional Order of dismissal signed by the Judge. These are All the orders on Appeal. If everything meets the requirements, Could you please File my Notice of Appeal and Return A copy of it stamped, Cleared And Filed within your Court. If it's Assigned A Case Number Could you Please Forward me that As well so it can be put on All Future Filings And motions.

In Advance, Thank-you!

Respectfully,
Frederick L. Howell, #310890
F. L. Howell

RECEIVED
AUG 27 2012
S.C. SUPREME COURT

# Notice OF Appeal

The State OF South CAROLINA
In the Supreme Court

---

Appeal From Orangeburg County
Court OF Common Pleas
Honorable Edgar Dickson

---

CASE NO: 2010-CP-38-0147

---

Frederick L. Howell, #310890
V. Petitioner
State OF South CAROLINA
Respondent

---

Notice OF Appeal

I, Frederick L. Howell Appeals the Honorable Edgar Dickson August 13, 2011 Order denying Post-Conviction Relief to petitioner. The Undersigned petitioner Recieved Notice OF entry OF the Order ON August 15, 2012. A Copy OF the Order ON Appeal is Attatched to this notice

Respectfully Submitted,
Frederick L. Howell, #310890
F. L. Howell

RECEIVED
AUG 27 2012
S.C. SUPREME COURT

# Proof of Service

The State of South Carolina
In the Supreme Court

---

Appeal From Orangeburg County
Court of Common Pleas
Honorable Edgar Dickson

---

Case No: 2010-CP-38-0147

---

Frederich L. Howell, #310890
V. Petitioner
State of South Carolina
Respondent

---

## Proof of Service

I, Frederich L. Howell, certify that i have Today Served the within Notice of Appeal upon the Respondent, And the Supreme Court by depositing a copy of it in the U.S mail, postage pre paid Addressed to the Attorney of Record Megan E. Harrington At P.O Box 11549 Columbia, S.C 29211. I Further certify that All parties Required by Rule to be Served have been Served this 21st day of August, 2012

Frederich L. Howell, #310890

F. Howell

ALAN WILSON
ATTORNEY GENERAL

July 13, 2012

Honorable Edgar W. Dickson
Post Office Box 1949
190 Gibson Street, Suite 207
Orangeburg, SC 29116-1949

**Re: Frederick L. Howell, 310890 v. State of South Carolina**
**2010-CP-38-0147**

Dear Judge Dickson:

Enclosed please find the proposed original **Final Order of Dismissal** in the above-captioned case.

The proposed Order was previously submitted on August 2, 2011. After the Final Order was signed on August 15, 2011, Applicant filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP with the Orangeburg County Clerk of Court on August 17, 2011. The State filed its Return to the Motion to Alter or Amend on September 9, 2011. In an Order, dated November 23, 2011 and filed December 13, 2011, the motion to alter or amend was denied and dismissed. A search of the public index database indicates a Final Order has not been filed in this case.

The Applicant filed a Notice of Appeal with the South Carolina Supreme Court in November, 2011. Because a final order had not been entered, the notice of appeal was dismissed without prejudice.

Therefore, we are re-submitting this Order for your consideration. If the Final Order of Dismissal meets with your approval, please sign and return to me in the enclosed envelope and I will forward to the Orangeburg County Clerk of Court to be filed and served.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General

MEH/lm
Enclosures

cc: The Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Frederick Howell, #310890

# State of South Carolina
# The Circuit Court of the First Judicial Circuit

**Edgar Warren Dickson**
**Judge**

Post Office Box 1949
151 Docket Street, Suite 207
Orangeburg, SC 29116-1949
Phone: (803) 535-2187
Fax: (803) 535-2188
edicksonj@sccourts.org

August 13, 2012

Frederick L. Howell #310890
Lieber Correctional Institution
P. O. Box 205
Ridgeville, S. C. 29472

RE: Frederick L. Howell v. The State of S.C. 2010-CP-38-00147

Dear Mr. Howell:

Enclosed is a copy of the Final Order of Dismissal in the above matter. The original has been sent to the Attorney General's Office for filing with the Court. You should receive a stamped copy from their office after filing.

Sincerely,

Edgar W. Dickson

EWD:pts

Enclosure

cc: Megan Harrigan
Assistant Attorney General

The Honorable Daniel E. Shearouse
Clerk of Court, S. C. Supreme Court

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF ORANGEBURG | ) | |
| | ) | |
| | ) | 2010-CP-38-0147 |
| Frederick L. Howell, #310890, | ) | |
| | ) | |
| Applicant, | ) | **CONDITIONAL ORDER OF DISMISSAL** |
| | ) | |
| v. | ) | |
| | ) | |
| State of South Carolina, | ) | |
| | ) | |
| Respondent. | ) | |

FILED FOR RECORD
WINNIFRED OLIVER
CLERK OF COURT
ORANGEBURG, S.C.
2010 AUG 16 A 9:41

This matter comes before this court by way of an application for post conviction relief (PCR) filed January 28, 2010.

## I. PROCEDURAL HISTORY

The Court has before it the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the June 2005 term of the Orangeburg County Grand Jury for Burglary, First Degree (05-GS-38-0710). The Applicant was represented by Richard L. Gustafson, Esquire. On August 18, 2005, the Applicant pled guilty to the charge. The Applicant was sentenced by the Honorable James C. Williams, Jr. to confinement for a period of twenty-two (22) years imprisonment.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Howell, Op. No. 07-UP-102 (Ct. App. filed March 6, 2007). The Applicant's

Petition for Rehearing was denied on April 24, 2007. The Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. The petition was withdrawn and dismissed by order dated July 19, 2007. The Remittitur was sent on July 24, 2007.

The Applicant filed his first Application for PCR on May 31, 2007 (C.A. No. 2007-CP-38-0690), alleging the following grounds for relief.

1. Ineffective assistance of counsel; and
   a. "Failure to challenge the burglary first indictment."
   b. "Defense counsel failed to procure alibi witnesses."
   c. "Failed to adequately investigate and introduce evidence."

2. Subject-matter jurisdiction.
   a. "Failure to challenge the burglary first indictment."

An evidentiary hearing was convened on June 8, 2009, at the Orangeburg County Courthouse. The Applicant was represented by Clarissa Warren Joyner, Esquire. By Order filed January 5, 2010, the Honorable Diane S. Goodstein denied and dismissed the application. The Applicant did not appeal.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
2. Newly Discovered Evidence (Finger Print Analysis).
3. Fraud upon the court (Falsified and fabricated evidence).

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

> 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.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

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 Court finds that the application should summarily be dismissed as successive.

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 (2003). 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 18, 2005. The remittitur, from Petitioner's unsuccessful appeal, was sent down to the lower court on July 24, 2007. This Application was filed on January 28, 2010, 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) (1985) 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.

Finally, Applicant's second and third allegations are arguments regarding the sufficiency of the evidence against him. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. Therefore, the Court should summarily dismiss this application for post-conviction relief.

## III. 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 Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Mary S. Williams, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

**AND IT IS SO ORDERED this** 6th **day of** August, 20 20.

Diane S. Goodstein
Chief Judge for Administrative Purposes
First Judicial Circuit Court

South Carolina

Laurell v State

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ORANGEBURG | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIRST JUDICIAL CIRCUIT |
| Frederick L. Howell, #310890,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | **2010-CP-38-0147**<br><br>**FINAL ORDER OF DISMISSAL** |

This matter comes before the Court pursuant to an application for post-conviction relief filed January 28, 2010. The State made its Return and Motion to Dismiss on or about July 26, 2010, requesting that the application be summarily dismissed as successive and barred by the one-year statute of limitations. Additionally, the State contended that Applicant's other allegations were not cognizable grounds for relief under the Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160. 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 dated August 6, 2010, and filed August 16, 2010, provisionally denying and dismissing this action. This Court gave 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 an Affidavit of Service dated June 22, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order by way of a document entitled "Opposition and Reply to the States Conditional Order of Dismissal" dated October 14, 2010, and filed with the Clerk of Court on October 29, 2010.

In the document, Applicant sets forth the following objection to the Conditional Order of Dismissal:

1. "With regard to the allegation that petitioner raised against plea counsel and solicitor (falsified and fabricated evidence), the State argues that those claims should be summarily dismissed because of the claims allegedly being successive...The rule is not strictly or consistently applied so as to allow the State to completely deny a second application....therefore, this assertion from the state must fail because the rule is not consistently applied."

2. "In turning to the claims at hand, the States assertion that Petitioner has failed to establish sufficient reason why he could not have raised the issue's in a prior application... Petitioner is complaining of the "Inactions" of State appointed Post-Conviction Relief counsel "Failing" to comply with statutory law. There is no absolutely no way Petitioner could have raised this issue in the prior P.C.R. application. "

3. "The State further argues that any allegations of plea counsel raised...should be dismissed for failure to comply with the procedure of S.C. Code Ann. 17-27-10 to 106...however, this claim falls within the discovery rule that provides: "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...within one (1) year after the actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of due diligence...Furthermore, it would be a denial of equal protection to preclude Petitioner from bringing his claim in a second application in as much as Washington was allowed a second application. See Washington v. State, 478 S.E.2d 833...Petitioner is not receiving the same benefits of law."

4. "Summary judgment is only appropriate from the "Totality of the Evidence Presented" the record could not lead to a rational trier of fact to find for the non-moving party...Surely in the instant case there are issues of material fact in dispute and summary judgment should be denied..."

5. "Petitioner...contends he received ineffective assistance of PCR counsel. The State submits that this is not a grounds for relief in as much as there is no Constitutional Right to appointed counsel for collateral review...Petitioner is arguing that when the state creates a statute that "Mandates" the Appointment of PCR counsel and what they "must" do, such as 71.1(d), then due process attaches itself to the actions of PCR counsel...The rules of Post Conviction were designed to assist not only the courts but the petitioners as well as the general public...Petitioner's claim pivots on the mandates of South Carolina Rule of Civil Procedure...Surely the omissions are apparent from a stringent review of the record – PCR counsel failed and neglected to follow the mandates proscribed by the South Carolina Rules of Civil Procedure 71.1(d) and in doing so has violated Petitioner's inalienable rights that are protected by the fourteenth (14th) amendment due process clause."

This Court has reviewed Applicant's objection to the State's Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final. Applicant's allegations of ineffective assistance of PCR counsel, after-discovered finger print evidence and falsified/fabricated evidence were all properly addressed and summarily dismissed in the conditional order of dismissal.

IT IS THEREFORE ORDERED that, for the reasons set forth herein and 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 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.

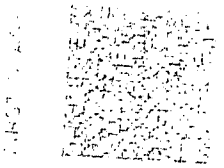
Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 13th day of August, 2011.

EDGAR W. DICKSON
Circuit Court Judge
First Judicial Circuit

Orangeburg, South Carolina.

Frederick L. Howell, #310890
Lieber Corr. Inst.
Cooper-A-Rm #24
P.O Box 205
Ridgeville, S.C
29472



RECEIVED
AUG 21 2012
MAIL ROOM
LIEBER C.I.

Supreme Court OF S.C
C/O Daniel E. Shearouse
Clerk of Court
P.O Box 11330
Columbia, S.C