

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL.)

IN THE COURT OF COMMON PLEAS)
FOR THE SECOND JUDICIAL CIRCUIT)

Samual B. Johnican, #340693,)
Applicant,)

Case No.: 2022-CP-06-00382)

v.)

FINAL ORDER OF DISMISSAL.

State of South Carolina,)

Respondent.)

FILED FOR RECORD
2024 AUG -7 PM 1:38
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief application filed Applicant Samual B. Johnican on December 13, 2022. Respondent, the State of South Carolina, made its return and moved to summarily dismiss the application under S. C. Code Ann. § 17-27-70 as untimely, successive to his previous application for post-conviction relief, and barred by the doctrine of *res judicata*.

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. In provisionally dismissing this application, this Court found the action should be dismissed as filed beyond the statute of limitations as set forth in Section 17-27-45, as successive to his previous PCR application, and as barred by the doctrine of *res judicata*. This conditional order of dismissal was signed May 6, 2024, and filed May 7, 2024, provisionally denying and dismissing this action, while giving the Applicant twenty 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 3, 2024, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed two responses to the Conditional Order of Dismissal, which this Court addresses herein. First, Applicant filed an objection to the Conditional Order of Dismissal on April 29, 2024¹. Applicant subsequently filed an "Amendment to the State's Conditional Order of Dismissal" on May 11, 2024. In these documents, Applicant reiterates his argument that the Order of Dismissal from his previous post-conviction relief ("PCR") action did not address all the issues raised at his evidentiary hearing. Applicant argues the PCR court did not address the allegation that he never received a mental competency hearing. The PCR Court addressed the allegation that counsel was ineffective for failing to request an independent examination of mental state. (See Order of Dismissal, filed March 19, 2016). Applicant further argues PCR counsel failed to file a 59(c) and that he was deprived of a right to an appeal as a result. Applicant did file an appeal of the denial of his prior PCR application which was perfected by Appellate Defender Robert Pachak. Mr. Pachak filed a Johnson² petition on August 17, 2016, in which he raised the issue that "plea counsel was ineffective in failing to request an independent mental examination." (See Johnson Petition for Writ of Certiorari, filed August 17, 2016). Not only was the issue of Applicant's mental competency addressed in the prior PCR Court's Order of Dismissal, but it was also the sole issue raised on appeal. Therefore, these objections are without merit.

This Court has reviewed Applicant's response to Respondent's motion to dismiss, in conjunction with the other pleadings, and determines Applicant has failed to provide a sufficient explanation as to why the dismissal should not become final.


¹ This objection was filed before the conditional order of dismissal was signed and is seemingly a response to the proposed conditional order of dismissal.

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and above, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty 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 5 day of August, 2024.



COURTNEY CLYBURN POPE
Chief Administrative Judge
Second Judicial Circuit

file, South Carolina