

State of South Carolina
In The Supreme Court

Appeal from Richland County
Court of Common Pleas
L. Casey Manning, Presiding Judge

James Robinson 273240 Case No: 2013-CP-40-01030 Petitioner,

V.

State of South Carolina Respondent

September 30, 2013
Notice of Appeal

RECEIVED
OCT 03 2013

SC Court of Appeals

Applicant James Robinson giving notice of his appeal from the Order of Dismissal denying his Post Conviction Relief dated August 1, 2013 and received by applicant September 18, 2013. Applicant just wanted to advise the court of his intent to appeal lower court decision to dismiss P.C.R. without a hearing. (See attached)

James Robinson #273240

990 Wisacky Hwy
Bishopville, S.C 29010

State of South Carolina
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Appeal from Richland County
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L. Casey Manning, Presiding Judge

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Case No: 2013-CP-40-01030

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Respondant

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On August 1, 2013 judge Casey Manning signed off on the order to dismiss applicants PCR claiming that it was successive, that the statute of limitations have run out to file.

Applicant is entitled to a successive PCR for the following reasons:

- 1) Applicant was borderline mentally retarded during his original post conviction relief application and hearing.
- 2) Applicant received inadequate access to the law library during his original PCR because he was on lock up majority of the time he was waiting to go to PCR hearing. It's possible to check SCDC records to verify.
- 3) Applicant received Ineffective Assistance of Counsel at his PCR hearing. Ineffective Assistance of Counsel on PCR is not "per se" a sufficient reason for a successive PCR application. According to *Aice v. State*. However applicant is arguing that the Ineffective Assistance combined with applicants inadequate access to the law library and his mental retardation constitutes sufficient reason for applicant to receive a successive PCR application.

Further more since applicant has alleged facts which would entitle him to a successive PCR and those facts are not refuted by the record applicant is entitled to a hearing under, *McCoy v State*, 737 S.E.2d 623 (2013). *Aice v State*, 409 S.E.2d 392

Applicant never received an arrest warrant before or after arrest, never received an *Gerstein* hearing. The purpose of a *Gerstein* is to review the police determination that probable cause existed to make the arrest. An unlawful search or seizures neither precludes prosecution nor invalidates a subsequent conviction.

Instead the usual remedy for a fourth amendment violation is suppression of illegally seized evidence. The amendment search and seizures and 2)

a requirement that probable cause support each warrant.

4) Both Federal and State constitution, as well as statutory law, mandate a speedy trial for an accused, and failure to provide a speedy trial can result in a dismissal of an indictment *Gilchrist v Comby* 317 SE 2d 784 (4th Cir 1984)

In *Godfrey v. Comm*, 317 SE 2d 781 (4th Cir 1984) Code 1950 § 19-2-243 defendant does not waive his right to speedy trial merely because he remains silent or does not demand that a trial date be set within prescribed period.

For the following reason applicant should receive relief, a new hearing.

James Robinson 273240

990 Wilsacky Hwy
Bishopville, SC 29010