



ALAN WILSON
ATTORNEY GENERAL

September 13, 2013

Samuel Dinkins, #293951
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

Re: Samuel Dinkins, #293951 v. State of South Carolina
2012-CP-43-0864

Dear Mr. Dinkins:

Enclosed please find a copy of the signed and filed **Final Order of Dismissal** in your above mentioned Post Conviction Relief case. Therefore, with this letter, we are closing our post-conviction relief file in this matter.

Sincerely,

Daniel Gourley
Assistant Attorney General

DG/ck
Enclosures

RECEIVED

OCT 17 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 SEP 10 PM 1:28
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Samuel Dinkins, # 293951

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-0864

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

CERTIFIED TRUE AND CORRECT
COPIES OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY, S.C.
SOUTH CAROLINA

This matter comes before the Court pursuant to an application for post-conviction relief filed May 1, 2012. The Respondent made its Return and Motion to Dismiss on August 9, 2012 requesting that the Application be summarily dismissed. 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, signed August 20, 2012 and filed on August 29, 2012, 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 the Certificate of Service dated November 7, 2012, serving the aforementioned Conditional Order of Dismissal on the Applicant's Counsel.

The Applicant responded by way of a document captioned "Objection to the Conditional Order of Dismissal" filed on August 23, 2012. Applicant attached three exhibits labeled A, B, and C. Exhibit A was captioned "Bond Hearing Papers." Exhibit B was captioned "PCR lawyer's statement." Exhibit C was captioned "PCR evidentiary hearing transcript." Applicant argues PCR Counsel was ineffective for refusing to present testimony of a juror from Applicants

[Handwritten signature]

trial. Applicant states, PCR Counsel conducted an interview with the juror but failed to investigate deeper into the matter. Applicant provided in support of his argument “Bond Hearing papers at the Lee County Magistrate Court’s office to prove that this particular juror’s daughter and Applicant [were] in fact arrested together and were codefendants.” Applicant argues his due process rights were violated, when Applicant’s PCR lawyer “deemed it unnecessary to have the juror present at the PCR evidentiary hearing.”

This Court finds Applicant’s allegation of ineffective assistance of counsel to be without merit as the ruling in Martinez v. Ryan has no bearing on an Applicant’s ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. 132 S.Ct. 1309 (2012). Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called “cause and prejudice” standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 2565 (1991) (“In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.”). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient “cause” to excuse a prisoner’s procedural default in a federal habeas corpus proceeding. See Martinez, supra at 6 (“Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.”).



With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental “cause and prejudice” standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” Id. Therefore, Applicant’s contention that Martinez allows him to bring this untimely and successive state PCR application is misguided and erroneous.

Additionally, Martinez’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court’s opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“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 went on to note that such a holding was in accord with the United State’s Supreme Court’s opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, this Court finds Applicant’s claim regarding the application of Martinez to be without merit.

Furthermore, this Court finds that the current application for post-conviction relief must be summarily dismissed because the Applicant’s assertion that he is entitled to a new trial based newly-discovered evidence in the form of bond hearing papers is without merit. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

A handwritten signature or set of initials, possibly "J.B.", written in black ink at the bottom right of the page.

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Applicant states in his response that PCR Counsel was aware of the alleged juror conflict prior to his first PCR hearing. Therefore, Applicant has failed to show how this evidence is "newly discovered." Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. Accordingly, the Application is denied and dismissed.

This Court finds that Applicant has shown no reason why he failed to file within the statute of limitations for filing a post-conviction relief application pursuant to S.C. Code. § 17-27-45(a). S.C. Code Ann. §17-27-45(a) reads as follows:

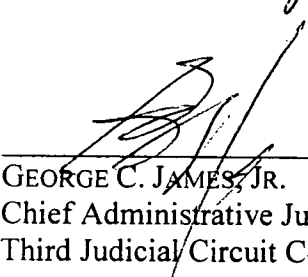
An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

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 went pled guilty on October 22, 2008. Therefore, the Applicant was required to file for post-conviction relief by October 23, 2009. This Application was filed on July 7, 2010, which is approximately nine months after the statutory filing period had expired. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice

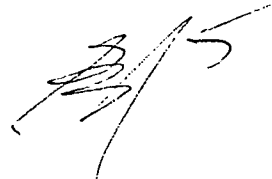
This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 5 day of Sep., 2013.



GEORGE C. JAMES, JR.
Chief Administrative Judge
Third Judicial Circuit Court

Spartanburg, South Carolina.



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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4300864

Samuel Dinkins

2013 SEP 10 5 21 PM '13 South Carolina State of

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT

PLAINTIFF(S)

SUM DEFENDANT(S)

Submitted by: Clerk of Court Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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 (List amount(s) below)

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 2143 Date 9/10/2013

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on:, to attorneys of record or to parties (when appearing pro se) as follows:

Samuel #293951 Dinkins ,

Alan McCrory Wilson PO Box 11549 Columbia, SC
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

See attached Order.

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

SAMUEL DINKINS, #293951,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

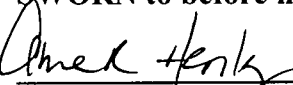
**Samuel Dinkins, #293951
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067**

This 13th day of September, 2013.



Caroline Kaiser
Legal Assistant for Respondent

SWORN to before me this 13th day September, 2013.



Notary Public for South Carolina
My Commission Expires: 7/18/2017

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

RECORDED

Samuel Dinkins, #293951

Plaintiff

2013 SEP 10 PM 1:28

CASE NO.
2012-CP-43-0864

v.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

Plaintiff's Attorney:

Samuel Dinkins, #293951, Bar No.

Address:

Allendale Correctional Institution

Fairfax, SC 29827

phone: fax:

e-mail: other:

Defendant's Attorney:

Daniel Gourley, Bar No.

Address:

P.O. Box 11549

Columbia, SC 29211

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

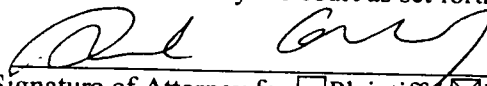
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant

September 4, 2013

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

EXEMPT: Rule to Show Cause in Child or Spousal Support

(check reason) Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRCP)

Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____