

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

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IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Curtis D. Richardson, # 269166,

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Case No. 2013-CP-26-1723

Petitioner,

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v.

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**ORDER DISMISSING  
PETITION FOR HABEAS CORPUS**

State of South Carolina, Cecilia Reynolds,  
Warden of Kershaw, SCDC, and SC  
Dept of Probation and Parole,

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Respondents.

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This matter comes before the Court by way of a document filed March 20, 2013, and captioned "PETITION FOR WRIT OF HABEAS CORPUS." Respondents filed a Return and Motion to Dismiss on May 14, 2013. The Court finds as follows:

**I.**

Petitioner is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In July 2010, the Horry County Grand Jury indicted Petitioner for possession of marijuana with intent to distribute (2011-GS-26-2856). In September 2011, the Horry County Grand Jury indicted Petitioner for unlawful possession of a pistol (2011-GS-26-3427). Brana J. Williams, Esquire, represented Petitioner. On September 16, 2011, Petitioner pled guilty to both indictments. The Honorable Benjamin H. Culbertson sentenced Petitioner to three years for the unlawful pistol charge and five years, concurrent, for the marijuana charge. The South Carolina Court of Appeals dismissed an appeal from the plea at Applicant's request on July 24, 2012.

Petitioner filed a post-conviction relief (PCR) application on November 4, 2011 (2011-CP-26-9227). This application was dismissed without prejudice because of the pending direct appeal on January 17, 2012.

Petitioner filed state *habeas corpus* actions on August 29, 2012 (2012-CP-26-7193) and August 30, 2012 (2012-CP-26-7194). Both actions were dismissed on November 21, 2012. Petitioner's motions for reconsideration were denied on January 11, 2013. The South Carolina Court of Appeals dismissed both appeals on June 5, 2013 and the remittiturs were returned on June 21, 2013.

Petitioner filed a second PCR application on April 24, 2012 (2012-CP-26-3250). The Honorable Larry B. Hyman, Jr., convened a hearing on the PCR application on April 23, 2013. Petitioner was present and represented by counsel. At the hearing, Petitioner voluntarily withdrew his application for PCR. The PCR action was dismissed by order filed May 9, 2013. Petitioner appealed this order, and the South Carolina Supreme Court dismissed the appeal on May 30, 2013. The remittitur was returned to the circuit court on June 18, 2013.

In the current petitioner for *habeas corpus*, Petitioner alleges that the South Carolina Department of Corrections has illegally modified his sentence and denied him parole eligibility.

## II.

"A *habeas corpus* petition must support the requested relief." Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include two allegations. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies are unavailable or inadequate. Id.

In this case, Petitioner has exhausted all available PCR remedies. His PCR action was voluntarily dismissed in April 2013 and his appeal from that withdrawal was dismissed in May 2013.

However, Petitioner has not alleged sufficient fact to show that other remedies are unavailable or inadequate. Specifically, the petition alleges Petitioner exhausted all administrative remedies. However, the attached order from the Administrative Law Court indicates his administrative appeal was dismissed for failure to exhaust all administrative remedies. Richardson v. S. C. Dep’t of Corr., 2012-ALJ-04-0945-IJ (Filed Feb. 7, 2013). The determination of parole eligibility is a matter for administrative review. See Furtick v. S.C. Dep’t of Prob., Parole, & Pardon Servs., 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003).<sup>1</sup> Because the Administrative Law Court has determined Petitioner has not exhausted his administrative remedies, Petitioner has failed to show he is entitled to *habeas corpus* relief.

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<sup>1</sup> Furtick, like Petitioner’s case, also involved a parole eligibility determination under S.C. Code Ann. § 24-21-640, which provides, in part, that the parole board “ must not grant parole ... to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.” Furtick, 352 S.C. at 596, 576 S.E.2d at 147. Petitioner has prior convictions for second degree burglary (2000-GS-26-145) and trafficking crack cocaine (2007-GS-26-1358). These prior convictions are likely the reason Petitioner was denied parole eligibility.

Therefore, Petitioner is procedurally barred from filling a habeas corpus action in the circuit court. His only remedy for challenging his parole eligibility is a perfected appeal of his grievance with the Administrative Law Court or a petition for *habeas corpus* in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). (“Furthermore, if a person is procedurally barred, his only means of obtaining state *habeas corpus* relief is to file a petition in the original jurisdiction of the Supreme Court.”).

**III.**

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the Petition for Habeas Corpus is hereby **denied and dismissed with prejudice**. This Court hereby advises Petitioner 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 19 day of Sept, 2013.



THE HONORABLE LARRY B. HYMAN, JR.  
Circuit Court Judge

Cowley, South Carolina.