

James Robinson 273240  
hgt Ber South 2124  
990 W. Sackety Hwy  
Bishopville, S.C 29010

Case No. 2013-CP-40-01030

10-24-13

**RECEIVED**

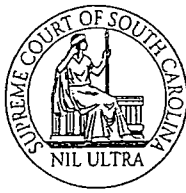
NOV - 5 2013

**S.C. Supreme Court**

In response to the Circuit Court's decision to dismiss my PCR I filed a Notice of Intent to appeal along with my response to court claim that I have no right to a successive PCR. I sent copies of my reasons why I should receive a PCR hearing, Notice of Appeal to the Clerk of Court Supreme Court and a copy to Attorney General Megan E. Harrigan. I found the rough draft of the issues but I can't find one for the Notice of Appeal. I sent them off on different days but wrote them up on the same day. Please find enclosed a copy of the Conditional Order of Dismissal. I am sending you what I have I do not have an order of dismissal Final order.

I would like for the court to send me back this copy of Conditional Order of Dismissal.

James Robinson



RECEIVED

The Supreme Court of South Carolina NOV - 5 2013

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

S.C. Supreme Court  
POST OFFICE  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

TO: James Robinson SCDC# 273240

DATE: 10.17.13

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within ~~ten~~ (10) days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

proof of service showing notice of appeal was served on opposing counsel, (Attorney General's Office)

a copy of the final order of dismissal

a copy of the conditional order of dismissal (if one was issued)

a copy of the conditional order of dismissal dated \_\_\_\_\_

~~Please return this sheet with the requested documents. Thank you!~~

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 James Robinson, #273240, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-01030

**CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
 2013 AUG -1 PM 2:22  
 JEANETTE W. MORRIS  
 C.C.P. & G.

This matter comes before this Court by way of an Application for post-conviction relief filed February 19, 2013. In its return, Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior post-conviction relief records. Applicant was indicted during the April 2000 term of the Richland County Grand Jury for three counts of Armed Robbery (2000-GS-40-51186, -51187, and -51188). April Sampson and Tara Sheil, Esquires, represented Applicant. On March 1, 2001, Applicant proceed to trial after which he was found guilty as indicted. On March 2, 2001, the Honorable John L. Breeden sentenced Applicant to twenty-five years imprisonment for each count of Armed Robbery, with the sentences to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Daniel T. Stacy, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on March 6, 2003. State v. Robinson, Op. No. 2003-UP-182 (S.C. Ct. App. filed March 6, 2003).

Applicant thereafter filed his first application for post-conviction relief on June 25, 2003 (2003-CP-40-3195). In that application, Applicant alleged “ineffective assistance of counsel.”<sup>1</sup> Tara Dawn Shurling, Esquire, represented Applicant. Respondent made a timely Return and an evidentiary hearing into the matter was convened on May 15, 2006 at the Richland County Courthouse before the Honorable L. Casey Manning. Judge Manning denied and dismissed Applicant’s PCR with prejudice by Order on June 27, 2006.

Applicant subsequently filed a Petition for Writ of Certiorari, appealing Judge Manning’s Order. M. Celia Robinson, Esquire, represented Applicant. The Court of Appeals denied Applicant’s Petition on January 16, 2013. State v. Robinson, Op. No. 2013-UP-021 (S.C. Ct. App. filed January 16, 2013). The Remittitur was issued on February 2, 2013.

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

1. Constitutional violation—4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 12<sup>th</sup> Amendment; and
2. Ineffective assistance of counsel.

#### **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 Applicant’s prior application for post-conviction relief filed on May 17, 2005. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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

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<sup>1</sup> Applicant subsequently filed two amended applications on February 7, 2006 and April 3, 2006, alleging other issues concerning counsel’s representation.

was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his first application for post-conviction relief therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392 (1991).

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. 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). Applicant was convicted of the offenses he challenges in this Application on March 2, 2001.

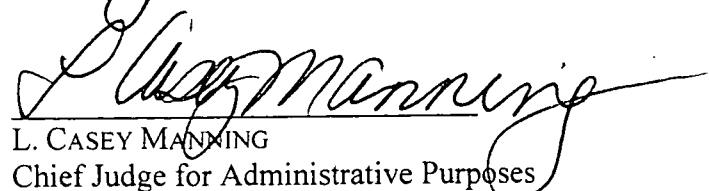
This Application was filed on February 19, 2013, which was well beyond after the statutory filing period had expired.


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 is summarily dismissed for failure to file within the time mandated by statute and because it is successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Megan E. Harrigan, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 1 day of Aug., 2013.

  
L. CASEY MANNING  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

, South Carolina.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated C.M. Toliver (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Richland ) **AFFIDAVIT OF PERSONAL SERVICE**

On this 18<sup>th</sup> day of September, 2013, I served the signed **Conditional Order of Dismissal** on **Inmate James Robinson, SCDC Inmate No. 273240** by delivering personally and leaving a copy of the same at Lee Correctional Institution, Bishopville, South Carolina. Deponent is not a party to this action.

s/ C.M. Toliver

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

This 18<sup>th</sup> day of Sept., 2013  
Jane A. Melton (L.S.)  
Notary Public for South Carolina

My-Commission Expires: 4-27-2014

**ADMISSION OF SERVICE**

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Lee Correctional Institution, Bishopville, Lee County, South Carolina, this 18<sup>th</sup> day of September, 2013.

s/ James Robinson  
Inmate Signature  
SCDC No. 273240

James Robinson 273240  
LCI Ken South 2124  
990 Wisacky Hwy  
Bishopville, SC 29010

SCDC

NOV 24 2013

MAIL ROOM

Clerk of Court  
Daniel E. Shearouse  
P.O. Box 11330  
Columbia, SC 29211

Legal Mail