

MHS

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2012CP4007930

Pernell #164169 Riley

State of South Carolina

RECEIVED

PLAINTIFF(S)

DEFENDANT(S)

NOV - 6 2013

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

S.C. Supreme Court

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.
- 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; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
 Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
FILED
SEP 17 AM 2:08
JANICE W. SHERIDAN
CLERK

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 PUBLIC 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
		\$
		\$
		\$

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 _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 September 2013 to attorneys of record or to parties (when appearing pro se) as follows: _____

Pernell #164169 Riley

Robert Daniel Corney

Pernell #164169 Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. Sheridan*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Pernell Riley, #164169,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

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

Case No. 2012-CP-40-7950)

FINAL ORDER OF DISMISSAL)

FILED
SEP 17 PM 12:12
RICHLAND COUNTY
CLERK OF COURT
W. M. HARRIS, JR.
C.S. 11-10

This matter comes before the Court pursuant to an application for post-conviction relief filed November 30, 2012. The Respondent made its Return and Motion to Dismiss on or about February 4, 2013, 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 dated February 7, 2013 and filed on February 11, 2013, 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 February 27, 2013, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order by way of a document captioned "Response to Conditional Order of Dismissal" filed April 29, 2013. In his response, Applicant states that he "unfortunately . . . filed his notice of appeal (of his second post-conviction relief action) to the wrong clerk of court" and therefore is entitled to a belated appellate review of the denial of this second application pursuant to Austin v. State¹. Applicant argues he was advised

¹ 305 S.C. 453, 409 S.E.2d 392 (1991).

to file a subsequent post-conviction relief application requesting a belated appeal pursuant to Austin v. State. Applicant further states he timely filed his notice of appeal, but with the improper clerk's office. Applicant asserts that these actions constitute sufficient grounds as to why the application should not be dismissed.

This Court has reviewed Applicant's responses to the State's Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final. The Court finds the Applicant's claims for ineffective appellate counsel does not amount to a "sufficient reason" to permit a successive application. As set forth in the Conditional Order of Dismissal, Applicant proceeded *pro se* on his second post-conviction relief application from which he is now attempting to appeal. Therefore, his claim of ineffective assistance of either trial or appellate counsel cannot be used to defeat the defense of statute of limitations or successiveness.

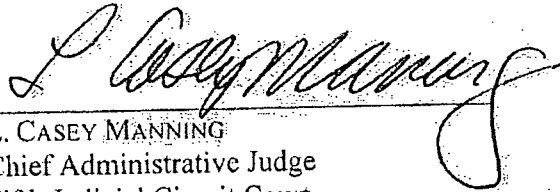
Additionally, Applicant contends that he should be allowed to proceed with a successive application due to his inadvertent filing with the wrong clerk's office. This Court is not persuaded by this argument, as the South Carolina Supreme Court has held that an applicant's inadvertent filing in the wrong location does not warrant equitable tolling or other such action. Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (2008). Therefore, this Application must be dismissed as impermissibly successive.

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

This Court hereby advises Applicant 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 11 day of September, 2013.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit Court

Columbia South Carolina.

RECEIVED

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

JUDGMENT IN A CIVIL CASE

NOV - 6 2013
CASE NUMBER: 2012CP4007930

Pernell #164169 Riley

State of South Carolina S.C. Supreme Court

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 February 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Pernell #164169 Riley

Robert Daniel Corney

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court *Jeanette W. McBride*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
))
RILEY Pernell, 164169,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012CP4007930

CONDITIONAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 FEB 11 AM 10:52
JEANETTE W. MCBRIDE
C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed November 30, 2012.¹

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was true bill indicted at the February 1989 term of the Richland County Grand Jury for Murder, Armed Robbery and Possession of Stolen Vehicle (89-GS-40-0784;0785;0787). He was represented by attorney Joseph Dennis Bolt, Esquire, on the charge(s). The Applicant proceeded to jury trial before The Honorable Sidney T. Floyd, and on November 29, 1989, was found guilty and of all charges as indicted². Applicant was sentenced to twenty-five (25) years imprisonment for Armed Robbery, five (5) years imprisonment for Possession of a Stolen Vehicle and life imprisonment for Murder.

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4007930&CourtType=G&CaseType=Civil&CourtAgency=40002>

² It appears one count of Criminal Conspiracy may have been *nolle prossed* by the state (1989-GS-40-3954).



The records before this Court are unclear whether Applicant filed a direct appeal of the convictions and/or sentences, but according to the current application, the South Carolina Court of Appeals affirmed the convictions/sentences by order issued on or about May 22, 1991.³

Applicant filed an application for post-conviction relief on December 18, 1995 (1995-CP-40-04301). Respondent made its Return on January 26, 1996, after which an evidentiary hearing was convened at the Richland County Courthouse on September 11, 1998. Applicant was present at the hearing with counsel, Tara D. Shurling, Esquire. By order dated January 6, 2000, the Honorable James R. Barber, III, denied and dismissed the application with prejudice. Applicant filed a notice of appeal and Petition for Writ of Certiorari to the South Carolina Supreme Court. By order dated August 8, 2001, the South Carolina Supreme Court denied Applicant's petition. The remittitur was issued August 29, 2001.⁴

Applicant subsequently filed a Petition for Writ of Habeas Corpus on or about August 12, 2002. Respondent made a return and motion for summary judgment in the action on September 24, 2002. After the issuance of the federal magistrate's report and recommendation report November 27, 2002, the federal district court dismissed the action on or about May 24, 2004.

Applicant filed a second application for post-conviction relief on December 18, 2006 (2006-CP-40-07502). Respondent made a Return and Motion to Dismiss on March 30, 2007, and a Conditional Order of Dismissal was entered by the Honorable Alison Renee Lee on May 24, 2007, provisionally dismissing the action while giving Applicant time to submit his objections to summary dismissal. After receiving Applicant's responses, Judge Lee issued a Final Order summarily dismissing the action with prejudice on January 17, 2008.

³ Applicant sets forth in the current application that the South Carolina Supreme Court affirmed his convictions on direct appeal on May 22, 1991, through memorandum opinion 1991-MO-121.

⁴ It appears from the Richland County Clerk of Court's online database, Applicant also had two other unspecified "special petitions" in this timeframe: 2000-CP-40-03602; 2001-CP-40-04431. The details of those actions and whether they pertain to the same underlying conviction are unclear.

No appeal was filed or perfected with the South Carolina Supreme Court.

In reviewing the current action, this Court has before it Applicant's records from the South Carolina Department of Corrections and/or the relevant documents from Applicant's unsuccessful direct appeal and prior PCR actions.

II.

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

10.	State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
(a)	<u>Ineffective assistance of PCR appellate Counsel</u>
(b)	_____
(c)	_____
11.	State concisely and in the same order the facts which support each of the grounds set out in (10):
(a)	<u>Pursuant (Austin v. State) Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), S.C. Code of § 17-27-100,</u>
(b)	<u>Failure to protect my rights to seek appellate review</u>
(c)	<u>of my prior PCR</u>

III.

Timeliness – S.C. Code §17-27-45(a)

This Court agrees that any allegations set forth by Applicant other than the claim for belated Austin appeal must 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). For the purposes of this Return, Applicant's conviction/sentence was finalized on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later. Because both Applicant's conviction and direct appeal were completed prior to the 1996 imposition of the statute of limitations in S.C. Code § 17-27-45, any application for relief must have been filed within one (1) year of the imposition of that statute, i.e. 1997. This application was filed November 30, 2012, at least fourteen (14) years after the time for filing 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, Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

SUCCESSIVE

This Court further agrees that the application must be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

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

other proceeding the 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 was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised the new grounds for relief in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application is impermissibly successive in nature and must be summarily dismissed.

BELATED AUSTIN⁵ APPEAL

Finally, Applicant contends he received "ineffective assistance of PCR appellate counsel" in his previous 2006 PCR action in securing direct appeal and, therefore, is entitled to a belated appeal of that prior PCR action. According to the records of that action, Applicant was not represented by counsel in the 2006 action and, therefore, proceeded *pro se* in the matter. The Final Order of Dismissal in the matter signed and entered by Judge Lee specifically noted the thirty (30) day timeline to secure appellate review, as well as direct Applicant's attention to the

⁵ Austin v. State, 305 S.C. 453, 409 S.E.2d 392 (1991).

relevant Appellate Court Rule(s) for properly securing appellate review. Applicant, having been explicitly advised of his right to appeal and having previously proceeded through the process of a PCR appeal on his 1995 PCR action, was well aware of the process.

Any failure to appropriately secure appellate review of the 2006 PCR action is attributable to Applicant alone. "The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state." Gregory v. Gregory, 292 S.C. 587, 358 S.E.2d 144 (1987). Likewise, Applicant's alleged ignorance of the rules associated with securing appellate review is no defense, especially in light of his apparent experience with the appellate process and the well evidenced notice given to Applicant of the right to appeal. It appears Applicant filed a notice of appeal with the Richland County Clerk on January 31, 2008; however, the South Carolina Supreme Court was never sent such a notice. Therefore, Applicant failed to secure and/or perfect an appeal of the circuit court's decision. Accordingly, the contention that Applicant received "ineffective assistance of PCR appellate counsel" is wholly without merit and fails to set forth any genuine issue of material fact for this Court to consider.

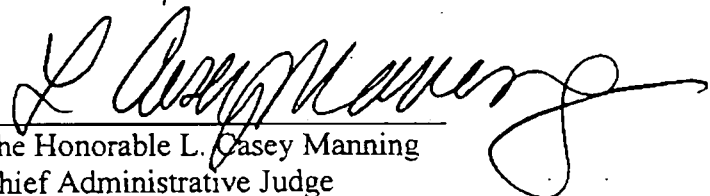
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Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent Applicant and expresses its intent to summarily dismiss this matter

unless Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. Applicant is granted thirty (30) 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 with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General
Robert D. Corney
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 7 day of February, 2013.


The Honorable L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

