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STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )  
IN THE COURT OF COMMON PLEAS )  
EIGHTH JUDICIAL CIRCUIT )

2013 OCT 10 P 3:30

Dwight Sullivan #309653,

2013-CP-30-0380

Applicant,

LAURENS COUNTY  
CLERK OF COURT

v.

**FINAL ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 13, 2013. The Respondent (the State) made its Return and Motion to Dismiss on July 23, 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 August 16, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 September 5, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Objection to the Conditional Order of Dismissal," the Applicant argues he is entitled to an evidentiary hearing because Lafler v. Cooper, 132 S.Ct 1376 (2012) was not available for his 2008 PCR application and was not "actually" discovered by him until November 2012; he further argues Boan v. State, 388 S.C. 272, 695 S.E.2d 830 (2010) was also not "actually"

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discovered until November 2012. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

First, S.C. Code Ann. § 17-27-45(c) states: "If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter **within one year** after the date of actual discovery of the facts by the applicant **or after the date when the facts could have been ascertained by the exercise of reasonable diligence.**" (emphasis added). Lafler v. Cooper, 132 S.Ct 1376 (2012) was published on March 21, 2012. The Applicant could have ascertained this information on or about March 21, 2012 as it became a published opinion, and thus, public information. Applicant must have filed this "newly discovered evidence" claim on or before March 22, 2013. This application was not filed until May 13, 2013, two months after the one-year time frame had past. Applicant admits he discovered this case in November 2012. Certainly, when it came to Applicant's attention, he could have filed his application. Applicant will not be granted an evidentiary hearing when he sits on his rights until after the statute of limitations under § 17-27-45(c) has run. The same analysis is applicable for Boan v. State, 388 S.C. 272, 695 S.E.2d 830 (2010).

Second, Applicant alleges Counsel was ineffective under Lafler v. Cooper because Counsel allegedly misadvised him to reject a plea offer from the State and proceed to trial where he was sentenced to a harsher penalty than what was offered. Even assuming *arguendo* Applicant had filed his application in a timely manner, this application is successive as during Applicant's first PCR hearing in 2008, there were absolutely no allegations or testimony regarding Counsel's ineffectiveness concerning an offer from the State.

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." 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).

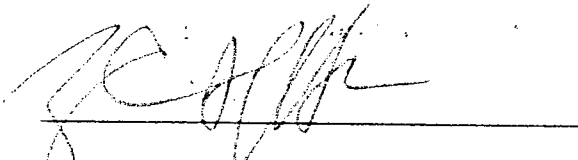
This Court finds that Applicant could have brought a claim of Counsel's ineffectiveness concerning a plea offer during his first PCR regardless of whether or not Lafler v. Cooper existed at the time of his hearing.

Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final. This Court also finds an evidentiary hearing is unnecessary to decide this case.

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

This Court hereby notifies the 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. 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 3<sup>rd</sup> day of October, 2013.



Eugene C. Griffith, Jr.  
Chief Administrative Judge  
Eighth Judicial Circuit

Newberry, South Carolina.

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster  
Lynn W. Lancaster  
Laurens County CCCP & GS

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

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated L.T. McCumy (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) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF )

On this 7<sup>th</sup> day of November, 2013, I served the signed Final Order of Dismissal on Inmate Dwight Sullivan, SCDC Inmate No. 309653 by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick South Carolina. Deponent is not a party to this action.

s/ L.T. McCumy  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 07 day of November, 2013  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 12-16-2019

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, McCormick, McCormick County, South Carolina, this 7<sup>th</sup> day of November, 2013.

s/ Dwight Sullivan  
Inmate Signature  
SCDC No. 309653

List case number here  
2013-CP-30-0380

THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

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Appeal From Eugene C. Griffith, Jr.  
CHIEF Administrative Judge, Eight  
Judicial Circuit  
Case NO: 2013-CP-30-0380

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STATE OF SOUTH CAROLINA.....Respondent

v.

Dwight Sullivan.....Appellant

NOTICE OF INTENT TO APPEAL

I Dwight Sullivan, #309653, hereby appeals the Final Order Of Dismissal dated October 3, 2013 and received by me on November 7, 2013, from Chief Administrative Judge, Eugene C. Griffith, Jr. to the South Carolina Court of Appeals.

  
Dwight Sullivan  
M.C.I.  
386 Redemption Way  
McCormick, S.C.  
29899

THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

STATE OF SOUTH CAROLINA	)	
	)	
Respondent,	)	EXPLANATION PURSUANT TO
v,	)	243 (c), SCACR
Dwight Sullivan	)	
	)	
Appellant	)	

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The Respondent alleged that, the Applicant was required to file his application by November 16, 2008, based on the Remittitur after the Applicant's unsuccessful appeal was issued on November 15, 2007. This Application was filed on May 13, 2013. The Applicant object, because section 17-25-45(c) provides, that if a PCR applicant discovers "material facts not previously presented and heard that requires vacation of his conviction or sentence, "he may file PCR application, within one year after the date of actual discovery ... or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The question before this Court is whether Applicant's PCR is subject to discovery rule. See McCoy v. State 401 S.C. 363, 737 S.E.2d 623 (S.C. 2013) where the Court said, "the PCR judge apparently overlooked the discovery rule in section 17-27-45 (c), which allows one year after the discovery of "material facts not

previously presented and heard that require vacation of the conviction or sentence" to file a PCR application. In that case, the Petitioner argued he did not discover the juror's misconduct until November 2009 and he promptly filed his second PCR after making that discovery. The Court held, "because Petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR Judge erred by summarily dismissing the claim.

The Applicant discovered his claim, in November 2012, and he filed his second PCR within one year of that discovery. Boan v State 388 S.C. 272, 695 S.E.2d 830 (S.C. 2010) became available on computer, because the South Esastern Reporter only extented ton 579 S.E.2d. The Lafter v Cooper 132 S.Ct. 1376 (2012) case was also discovered in November 2013 and was the based of his second PCR application.

Here applicant received consecutive sentence for murder and was offered thirty years for those crimes. If applicant is entitled to the "discovery rule" and this "discovery rule" is not refuted by the record, his statute of limitation may be excused.

The McCoy Court also, found a genuine issue of fact exist as to whether Petitioner's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrate a sufficient reason why the claim asserted were not asserted previously. Applicant alleged

that Lafter v Cooper came available in 2012 and Boan in 2010, long after filing his first PCR application. The McCoy Court said, "based on the factual disputed, a hearing is necessary to resolve this issue." The Applicant expects the same.

CONCLUSION

Applicany prays that this case is remanded for an evidentiary hearing.

Dated  
November 18<sup>th</sup> 2013

  
Dwight Sullivan

THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

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Appeal From Eugene C. Griffith, Jr.  
Chief Administrative Judge, Eighth  
JUDICIAL CIRCUIT  
Case NO: 2013-CP-30-0380

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v.

Dwight Sullivan.....Appellant

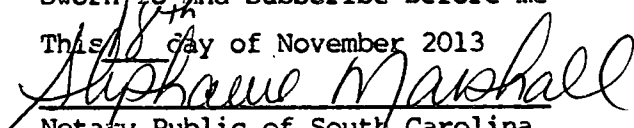
PROOF OF SERVICE

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I certify that I served a copy of the Notice of Intent To Appeal on South Carolina Court of Appeals, PO BOX 11629, Columbia, S.C. 29211; J. Rutledge Johnson, Assistant Attorney General, P O BOX 11549, Columbia, SC 29211 and Lynn W. Lancaster, Clerk of Court Laurens County PO BOX 287, Laurens, SC 29360 by depositing the same in the U.S. mail at McCormick mail-room.

Sworn To And Subscribe Before me

This <sup>18<sup>th</sup></sup> day of November 2013

  
Notary Public of South Carolina

My Commission Expires May 12, 2021

  
Dwight Sullivan

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STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )  
W. LANCASTER )  
IN THE COURT OF COMMON PLEAS )  
EIGHTH JUDICIAL CIRCUIT )

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Second, Applicant alleges Counsel was ineffective under Lafler v. Cooper because Counsel allegedly misadvised him to reject a plea offer from the State and proceed to trial where he was sentenced to a harsher penalty than what was offered. Even assuming *arguendo* Applicant had filed his application in a timely manner, this application is successive as during Applicant's first PCR hearing in 2008, there were absolutely no allegations or testimony regarding Counsel's ineffectiveness concerning an offer from the State.

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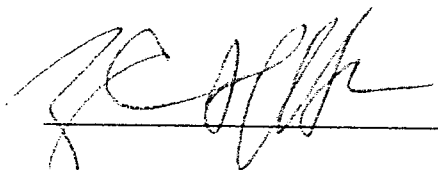
This Court finds that Applicant could have brought a claim of Counsel's ineffectiveness concerning a plea offer during his first PCR regardless of whether or not Lafler v. Cooper existed at the time of his hearing.

Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final. This Court also finds an evidentiary hearing is unnecessary to decide this case.

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

This Court hereby notifies the 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. 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 3<sup>rd</sup> day of October, 2013.



Eugene C. Griffith, Jr.  
Chief Administrative Judge  
Eighth Judicial Circuit

Newberry, South Carolina.

A TRUE COPY OF ORIGINAL  
Lynn W. Lancaster  
Lynn W. Lancaster  
Laurens County CCCP & GS

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

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

On this 7<sup>th</sup> day of November, 2013, I served the signed Final Order of Dismissal on Inmate Dwight Sullivan, SCDC Inmate No. 309653 by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick South Carolina. Deponent is not a party to this action.

s/ L.T. McCormick  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 07 day of November, 2013  
J. J. [Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 12-16-2019

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, McCormick McCormick County, South Carolina, this 7<sup>th</sup> day of November, 2013.

s/ Dwight Sullivan  
Inmate Signature  
SCDC No. 309653

List case number here  
2013-CP-30-0380