

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
James Charles Calwile, )  
S.C.D.C. No. 299166, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2012-CP-23-3614

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of a "State Habeas Corpus" filed May 31, 2012. The Respondent made its Return, requesting the petition be summarily dismissed.

I.

The Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Petitioner was indicted at the October 2002 term of the Greenville County Grand Jury for first-degree burglary (2002-GS-23-8887). He was represented by Dorothy A. Manigault, Esquire.

After the State called the case to trial, the Petitioner was found guilty. On January 15, 2004, the Honorable C. Victor Pyle, Jr. sentenced the Petitioner to fifteen (15) years imprisonment. The Petitioner did not appeal.

**2004-CP-23-2736**

The Petitioner filed a PCR application on April 27, 2004 (2004-CP-23-2736). The Petitioner raised the following issues:

1. Ineffective assistance of counsel:



- a. Failure to investigate.
- b. Failure to file an appeal.

An evidentiary hearing was convened on December 15, 2004 at the Greenville County Courthouse. Rodney W. Richey, Esquire represented the Petitioner. The Honorable John C. Few denied and dismissed the PCR application by order filed February 14, 2005.

The Petitioner filed a notice of appeal. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson<sup>1</sup> petition. The South Carolina Court of Appeals denied the petition for writ of certiorari on August 2, 2007.

#### **Federal Habeas Corpus**

The Petitioner filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on September 11, 2007 (6:07-3100-HMH-WMC). The Respondent submitted a motion for summary judgment on January 24, 2008. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated May 1, 2008. On May 20, 2008, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed October 28, 2008, the Court of Appeals denied a certificate of appealability and dismissed the appeal. After a subsequent denial of the Petitioner's petition for rehearing en banc, the mandate was issued on December 9, 2008.<sup>2</sup>

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

<sup>2</sup> The Petitioner appears to have also filed an untimely "Notice of Appeal and Amended Issue" at the United States Supreme Court dated March 3, 2009.

2 

2009-CP-23-3948

The Petitioner filed a PCR application on May 7, 2009 (2009-CP-23-3948). The Petitioner raised the following issues:

1. Newly discovered evidence:
  - a. "The June 21 2002 order was issued without the authority of the Court also their was no hearing to establish (1) Probable Cause (2) relevant material evidence will be found."
2. "Prosecution an Judicial Misconduct."

The State filed a return and motion to dismiss, arguing the matter was untimely and successive. The Honorable John C. Few issued a conditional order of dismissal dated July 13, 2009 and filed July 15, 2009. Though the Petitioner filed a response, Judge Few issued a final order of dismissal dated October 1, 2009 and filed October 5, 2009.

The Petitioner filed a timely notice of appeal. The South Carolina Supreme Court required the Petitioner – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated November 17, 2009, the Supreme Court found the Petitioner failed to meet his burden in this regard.

II.

This Court finds the Petitioner cannot receive relief on his "State Habeas Corpus."

"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 the two allegations described below. 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, such as PCR, are unavailable or inadequate. Id. PCR is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” 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

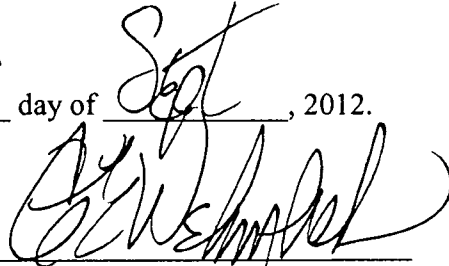



relief is to file a petition in the original jurisdiction of the Supreme Court.” Id.

III.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Petitioner advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Petitioner is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 19 day of Sept, 2012.

  
\_\_\_\_\_  
G. Edward Welmaker  
Chief Administrative Judge  
Thirteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina.

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2012CP2303614

James Charles Calwile vs. South Carolina State of

**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), SCRCP;  Rule 41(a),  
SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  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;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this 24th day of September, 2012.

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 24th day of September, 2012, and a copy mailed first class this 24th day of September, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

James Charles Calwile Livesay Corr Instst/520 B P  
O Box 580 Una, SC 29378

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court