

Jamel L. Alexandrette  
#321631  
Lieber Correctional Institution SA-49  
P.O. Box 205  
Ridgeville, SC 29472-0205

November 22, 2013

**RECEIVED**

NOV 26 2013

**S.C. SUPREME COURT**

The Honorable Daniel Shearouse  
Clerk  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re:** Notice of Appeal  
*Jamel L. Alexandrette v. State of South Carolina*  
C/A No. 2012-CP-45-547

Dear Mr. Shearouse:

Please find enclosed for filing, pursuant to Rule 243, South Carolina Appellate Court Rules, the following documents:

- 1) Notice of Appeal;
- 2) Final Order on appeal;
- 3) Explanation pursuant to Rule 243(c), SCACR; and
- 4) Certificate of Service

The final order signed by Judge James only cited Rule 243, SCACR. Based upon Judge James' grounds for dismissal and out of an abundance of caution regarding the Judge's lack of specificity, I am filing an "Explanation", pursuant to Rule 243(c), SCACR, as to why dismissal on those grounds were incorrect

If this filing or "Explanation" is not in correct form, please notify me of the corrections required. Your assistance in this matter is sincerely appreciated.

With kindest regards, I am,

Sincerely,



Jamel L. Alexandrette

Cc: Honorable Sharon Staggers  
Daniel Gourley, Esq.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

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**Case No. 2012-CP-45-547**

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Jamel L. Alexandrette, # 321631 ..... Appellant,

vs.

State of South Carolina, ..... Respondent.

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**NOTICE OF APPEAL**

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Jamel L. Alexandrette appeals the order of the Honorable George C. James, Jr., dated October 25, 2013. Appellant received written notice of entry of this order on November 6, 2013.

November 22, 2013



JAMEL L. ALEXANDRETTE  
#321631  
Lieber Correctional Institution SA-49  
Post Office Box 205  
Ridgeville, South Carolina 29472-0205

**APPELLANT, Pro se**

Other Counsel of Record:

Daniel Gourley  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-45-547

Jamel L. Alexandrette, # 321631 ..... Appellant,

vs.

State of South Carolina ..... Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a true and correct copy of the Notice of Appeal on all parties required by Court Rules, by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 22 day of November 2013, addressed as follows:

Daniel Gourley, Esq.  
Assistant Attorney General  
Office of S.C. Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

Honorable Sharon Staggers  
Clerk of Court  
Williamsburg County  
125 W. Main Street  
Kingstree, SC 29556-5343

JAMEL L. ALEXANDRETTE  
#321631  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

APPELLANT, Pro se

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )  
Jamel L. Alexandrette, #231631, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-547

**CONDITIONAL ORDER  
OF DISMISSAL**

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This matter comes before this Court by way of an application for post-conviction relief filed October 5, 2012. In its Return, Respondent requests that the action be summarily dismissed.

**PROCEDURAL HISTORY**

Before this Court are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and records from Applicant's previous application for post-conviction relief. The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was indicted during the October 2006 term of the Williamsburg County Grand Jury for Murder. Legrand Carraway, Esquire, represented him. On May 1, 2007, the Applicant pled guilty to the charge. He was sentenced by the Honorable R. Ferrell Cothran, Jr. to confinement for a period of thirty (30) years. The Applicant did not appeal his guilty plea or sentence.

Applicant filed a timely post-conviction relief application he alleging he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Fail to advise me a (sic) defense, such as self defense."
  - b. "Failure to inform of lesser offense."
  - c. "Failure to protect client privilege."
2. Involuntary guilty plea.

Respondent made its Return on July 2, 2011. An evidentiary hearing was convened into the matter on October 26, 2010 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's office. By Order dated January 25, 2011 and filed February 3, 2011, Judge Young denied and dismissed the application with prejudice. A timely notice of appeal was filed. In a written order, dated September 9, 2012, the South Carolina Supreme Court denied the petition for writ of certiorari and granted counsel's request to withdraw. The Remittitur was issued on September 26, 2012. Applicant filed a timely Habeas Corpus (Do. No. 2:12-3304-DCN-BHH) alleging "Petitioner was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments and was Prejudiced." In support of his allegation, Petitioner argues, "Trial Counsel erred in advising Petitioner that he was 'on his own' with respect to matters of defense because this mean that the state's case was not subject to any true adversarial testing." The Habeas Corpus is still currently pending.

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

1. Ineffective assistance of counsel
  - a. "counsel was ineffective by failing to suppress statements."
  - b. "Counsel failed to protect attorney client privileges."
2. Subject matter jurisdiction
  - a. "Trial court lacked jurisdiction."
  - b. "The State's procedure render the indictment void."
3. Involuntary guilty plea
  - a. "Plea was involuntary made which violates due process."



4. "Statement made in violation of MIRANDA."

Applicant filed an Amended post-conviction relief application on March 21, 2013

alleging the following allegations:

1. "Applicant was denied the effective assistance of counsel, in violation of South Carolina Law, and the Sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel's failure to challenge the indictment and the Applicant was prejudiced by the deficiency."
  1. "The indictment for the offense of murder against Applicant was not properly true-billed and trial counsel failed to timely object at the time prescribed by South Carolina statutory law."
2. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the sixth and Fourteenth Amendments to the United States Constitution, as a result of trial counsel abandoning Applicant as a constitutionally guaranteed stage of protection and Applicant was prejudiced by this denial of counsel."
  1. "The applicant was denied counsel where trial counsel failed to protect the integrity and sanctity of the attorney-client privilege in allowing agents of the State (Solicitor and Investigator) to be present during confidential and constitutionally protected discussions between Applicant and counsel which resulted in counsel and agents of the State coercing Applicant to enter a plea of guilty in lieu of continuing to exercise his right to trial."
3. "Applicant was denied the effective assistance of counsel, in violation of South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to mount a viable defense of self-defense, and Applicant was prejudiced or mitigated the offense to involuntary manslaughter."
  1. "Trial counsel failed to prepare and utilize a viable and credible self-defense based on the available testimony of the only eye-witness, which would have exonerated Applicant or mitigated the offense to involuntary manslaughter."
4. "Applicant was denied the effective assistance of post-conviction relief counsel, in light of United States Supreme Court precedent (*Martinez v. Ryan*, (no. 10-001, March 20, 2012)) and South Carolina law, in failing to amend the post-



conviction relief application to incorporate, present and preserve for review fundamental constitutional errors below:"

1. "Post-conviction relief counsel failed to amend and present the issue of trial counsel's failure to challenge the improper true-billed procedure on Applicant's murder indictment."
2. "Post-conviction relief counsel failed to amend and present the issue that trial counsel failed to prepare and utilize a viable and credible self-defense based on the available testimony of the only eye-witness, which would have changed the outcome of the trial by exonerating Applicant of any culpability, or in the least, mitigated the offense to involuntary manslaughter."
3. "Post-conviction relief counsel failed to amend and present the issue that when trial counsel coerced Applicant to enter a plea of guilty, trial counsel gave Applicant incorrect sentencing advice where the statutory law does not prescribe a sentence as counsel conveyed to Applicant and his sister."

#### 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 his prior application for post-conviction relief. 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 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. Aice v. State, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).



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 sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Aice v. State, 409 S.E.2d 392 (1991); Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds further, that this Application for Post-Conviction Relief should also 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). The Applicant pled guilty to the offense he challenges in this Application on May 1, 2007. This application was filed on October 5, 2012, well beyond the one year 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, the 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.

Further, Applicant contends that under the United States Supreme Court's recent decision in Martinez v. Ryan, No. 10-1001 (S. Ct. filed March 20, 2012), he is able to file a successive state PCR action alleging ineffective assistance of previous collateral counsel. This Court finds this contention to be without merit as the ruling in Martinez has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 2565 (1991) ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See Martinez, *supra* at 6 ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial.").

With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental "cause and prejudice" standard on which Martinez relies is

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exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” Id. Therefore, Applicant’s contention that Martinez allows him to bring this untimely and successive state PCR application is misguided and erroneous.

Additionally, Martinez’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court’s opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”). Aice went on to note that such a holding was in accord with the United State’s Supreme Court’s opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, this Court finds Applicant’s claim regarding the application of Martinez to be without merit.

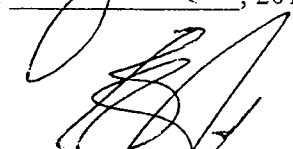
Finally, because Applicant has failed to set forth any reason he could not have raised the current allegations in his previous application other than to allege PCR counsel was ineffective in failing to raise them, the current application is in fact successive in nature. Accordingly, this application must be summarily dismissed for a failure to state a claim entitling Applicant to relief, for being successive in nature and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).


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

Office of the Attorney General  
Attn: Daniel Gourley, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 10 day of June, 2013.

  
\_\_\_\_\_  
GEORGE C. JAMES, JR.  
Chief Judge for Administrative Purposes  
Third Judicial Circuit

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



STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )  
Jamel L. Alexandrette, # 321631 )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-5470

**FINAL ORDER OF DISMISSAL**

13 OCT 9 04:11:19  
CLERK OF COURT


This matter comes before the Court pursuant to an application for post-conviction relief filed October 5, 2012. The Respondent made its Return and Motion to Dismiss on June 7, 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, signed June 10, 2013 and filed on June 17, 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 the Certificate of Service dated September 27, 2013, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document captioned "Applicant's Opposition to Respondent's Motion to Dismissal and Conditional Order of Dismissal and Applicant's Motion(s) to Appoint Counsel and Grant an Evidentiary Hearing" filed on July 1, 2013. Applicant filed a second document captioned, "Applicant's Opposition to Conditional Order of Dismissal" on October 7, 2013. In the two documents, Applicant continues to argue that he is entitled to a subsequent post-conviction relief hearing due to ineffective assistance of PCR Counsel. Specifically, Applicant



argues “PCR Counsel failed to amend and raise cognizable and fundamental errors as recently established by the United States Supreme Court in Martinez v. Ryan.” Applicant continues to argue that “pursuant S.C. Code § 17-27-45(a), this application was filed within the one year of his sentencing, notwithstanding the tolled time pending his first PCR and the Petition for writ of certiorari thereafter.” Applicant continues to argue that he is entitled to a successive PCR application and evidentiary hearing due to “trial counsels failure to quash a defective indictment that deprived the court of jurisdiction,” “PCR Counsel failed to amend and present the issue that trial counsel did not prepare a viable defense by utilizing the only eye witness,” and “trial counsel coerced Applicant to pled guilty and this amounted to a denial of counsel and a miscarriage of justice.”

This Court finds this contention to be without merit as the ruling in Martinez has no bearing on an Applicant’s ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called “cause and prejudice” standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 2565 (1991) (“In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.”). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient “cause” to excuse a prisoner’s procedural default in a federal habeas corpus proceeding. See

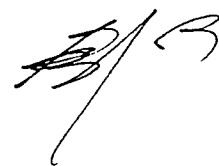
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Martinez, *supra* at 6 (“Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.”).

With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental “cause and prejudice” standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” *Id.* Therefore, Applicant’s contention that Martinez allows him to bring this untimely and successive state PCR application is misguided and erroneous.

Additionally, Martinez’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court’s opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. *See Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”). Aice went on to note that such a holding was in accord with the United State’s Supreme Court’s opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, this Court finds Applicant’s claim regarding the application of Martinez to be without merit.

Finally, because Applicant has failed to set forth any reason he could not have raised the



current allegations in his previous application other than to allege PCR counsel was ineffective in failing to raise them, the current application is in fact successive in nature. Accordingly, this application must be summarily dismissed for a failure to state a claim entitling Applicant to relief, for being successive in nature, and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).

Additionally, this Court finds this application is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel and subject matter jurisdiction in prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court intends to summarily dismiss these claims as barred by *res judicata*.


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

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty 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 25 day of Oct., 2013.

  
\_\_\_\_\_  
GEORGE C. JAMES, JR.  
Chief Administrative Judge  
Third Judicial Circuit Court

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

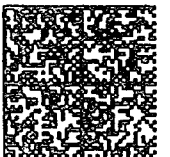


Normel L. Alexandrette  
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P.O. Box 205  
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The Honorable Daniel Shearouse  
Clerk  
Supreme Court of South Carolina  
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