

**Richard Warder**  
Attorney At Law

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December 11, 2013

South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

DEC 16 2013

Re: Joshua Desorey 293304 vs. State of South Carolina

**S.C. Supreme Court**

Dear Court:

Enclosed please find a Notice of Intent to Appeal and Certificate of Mailing in reference to the above captioned case.

Thank you for your cooperation in this matter.

Sincerely,



Richard H. Warder

RHW/tls

Enclosures

Joshua Desorey  
Karen C. Ratigan, South Carolina Attorney General Office



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE COUNTY  
COMMON PLEAS COURT

D. GARRISON HILL, CIRCUIT COURT JUDGE  
2013-CP-2301761

**RECEIVED**  
DEC 16 2013  
S.C. Supreme Court

JOSHUA DESORCY #293304.....Applicant,

v.

STATE OF SOUTH CAROLINA.....Respondent.

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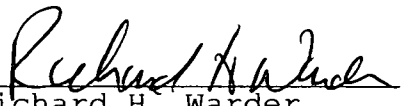
NOTICE OF INTENT TO APPEAL

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Joshua Desorcy, SCDC 293304, appeals the Order of Honorable  
D. Garrison Hill, dated December 3, 2013.

Respectfully Submitted

December 11, 2013

  
Richard H. Warder  
Attorney At Law  
15 Primrose Street  
P.O. Box 26133  
Greenville, South Carolina

Other counsel of record:

Karen C. Ratigan  
South Carolina Attorney General Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549



**Richard Warder**

Attorney At Law

DATE: December 19, 2013

TO: South Carolina Supreme Court  
Attn: Janet Johnson

**RECEIVED**

FAX NO.: 803-734-1499

DEC 19 2013

FROM: **Tina Simpson** / Secretary for  
Richard H. Warder  
Attorney At Law

**S.C. SUPREME COURT**

P. O. Box 26133  
Greenville, SC 29616  
864-271-9955 - 1-800-273-9955

FAX NO.: (864) 232-8045

IN RE: **Joshua Desorcy**

Enclosed please find a copy of the Conditional Order of Dismissal and Applicant's Response to Conditional Order of Dismissal in to the above captioned client.

TOTAL NUMBER OF PAGES INCLUDING COVER: 10

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual(s) or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the address above via United States Postal Services.

15 Primrose Street

Post Office Box 26133

Greenville, SC 29616

271-9955 Office

232-8045 Fax





these services appropriate, pursuant to the S.C. Code § 17-3-50(C), based upon the above listed facts upon which this motion was based." A copy of this Order is attached and incorporated as "Exhibit A."

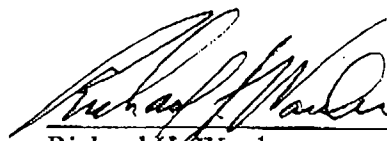
The Ex Parte Order further provided that

"Counsel is authorized to expend a reasonable sum in an amount up to \$1,500.00 (fifteen hundred dollars) pursuant to the billing statement of the retained psychologist, for the expenses of an evaluation and court appearances necessary for the defense without further Order of this Court."

Applicant would show that a hearing on the merits was held on December 16, 2004 and Applicant's counsel never presented or mentioned any psychological examinations or findings, and Defendant was never seen by a psychologist, and has only recently learned that it was ordered that he granted an evaluation by a psychologist or other equally qualified mental health professional. Applicant believes the result in the December 16, 2004 hearing would have been different had the testimony from the psychologist been available at that hearing. The Court already ruled that this testimony was reasonable and necessary.

The Applicant is therefore informed and believes that he should be allowed to obtain an expert pursuant to the previous Order of this Court, and that his Application for Post Conviction Relief filed March 27, 2013 be heard on its merits once he is examined by a psychologist or equally qualified mental health professional.

Respectfully submitted,



Richard H. Warder  
Attorney for Applicant

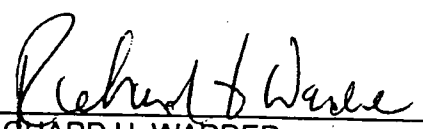
September 10, 2013

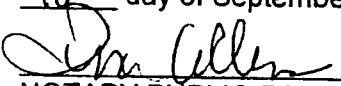
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2013-CP-23-1761
	)	
JOSHUA DESORCY, SCDC 293304	)	
APPLICANT,	)	
-vs-	)	CERTIFICATE OF MAILING
STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT	)	

This is to certify that the undersigned attorney for the Applicant, did cause the Applicant's Response to Conditional Order of Dismissal, to be served upon the attorney for the Respondent, by mailing a copy of the same in an envelope addressed as shown below and depositing same in the United States Mail, proper postage affixed thereto, on the 10 day of September, 2013.

Karen C. Ratigan  
Assistant Deputy Attorney General  
South Carolina Attorney General Office  
P.O. Box 11549  
Columbia, South Carolina 29211-1549

  
\_\_\_\_\_  
RICHARD H. WARDER  
ATTORNEY FOR THE DEFENDANT

SWORN to before me this  
10 day of September, 2013  
  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/31/13

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Joshua Desorcy, )  
 S.C.D.C. No. 293304, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2013-CP-23-1761

FILED-CLERK OF  
 GREENVILLE CO  
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**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 27, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the August 2002 term of the Greenville County Grand Jury for murder (2002-GS-23-7992). He was represented by Christopher T. Posey, Esquire.

On May 21, 2003, the Applicant pled guilty to voluntary manslaughter. He was sentenced by the Honorable Charles B. Simmons to twenty (20) years imprisonment. The Applicant did not appeal.

The Applicant filed a PCR application on December 9, 2003 (2003-CP-23-8294). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. "Lack of legal jurisdiction to arrest and indict defendant."

3. "Gross disregard for state judicial procedure."
4. "Newly discovered evidence previously unknown to defendant."

An evidentiary hearing was convened on December 16, 2004 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable John C. Few denied and dismissed the PCR application by order filed January 5, 2005.

The Applicant filed a notice of appeal. Robert M. Pachak, 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 Supreme Court denied the petition for writ of certiorari on September 20, 2006.

## II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of PCR counsel:
  - a. Did not receive a psychological evaluation.

## III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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

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

applications filed after July 1, 1996. See 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 21, 2003. The Applicant was therefore required to file his application before May 21, 2004. This application was filed on March 27, 2013, which was over eight (8) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

#### IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

The Applicant’s contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, “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 v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 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 8 day of AUG., 2013.

*D. Garrison Hill*

\_\_\_\_\_  
D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

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

STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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JOSHUA DESORCY, 293304 )  
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Applicant, )  
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vs )  
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STATE OF SOUTH CAROLINA, )  
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Respondent. )  
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IN THE COURT OF COMMON PLEAS

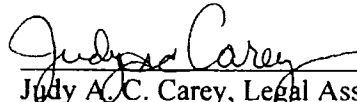
2013-CP-23-1761

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

**Richard H. Warder, Esquire**  
**Post Office Box 26133**  
**Greenville SC 29616**

DATED this 4th day of September, 2013.

  
\_\_\_\_\_  
Judy A.C. Carey, Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2301761

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2013 DEC 9 PM 2 46

Joshua Desorcy 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), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - 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 9th day of December, 2013.

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 9th day of December, 2013, and a copy mailed first class this 9th day of December, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Richard Harold Warder PO Box 26133 Greenville, SC 29616

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  
RICHARD WARDER

DEC 11 2013

RECEIVED

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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 Joshua Desorcy, )  
 S.C.D.C. No. 293304, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2013-CP-23-1761

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2013 DEC 9 9 24 PM

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 27, 2013. The Respondent made its return on August 5, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 filed August 21, 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 a Certificate of Service dated September 4, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant's attorney.

In a document captioned "Applicant's Response to Conditional Order of Dismissal" and filed September 10, 2013, the Applicant argues an ex parte order for expenses was issued before the Applicant's first PCR hearing in order to fund "the services of a psychologist, or other

equally qualified mental health professional.” The Applicant argues this expert was not presented at his first PCR hearing and that he should be entitled to obtain this expert (under the terms of the ex parte order) and proceed to a merits hearing.

This Court has reviewed the Applicant’s response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty on May 21, 2003. As this action was filed on March 27, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant’s second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on December 16, 2004. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

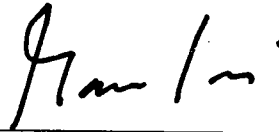
To the extent the Applicant is contending this argument is newly-discovered evidence, this Court finds such an argument would be without merit. This Court finds the Applicant’s alleged evidence has failed to prove any of the five (5) required elements of newly-discovered evidence. See State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009).

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

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

12/3/13

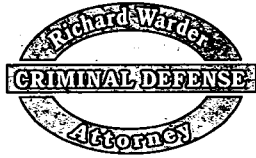


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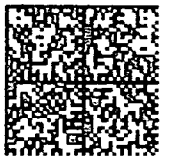
D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

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

Post Office Box 26133 • Greenville, SC 29616



South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina 29211



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