

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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January 30, 2014

Via US Mail

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

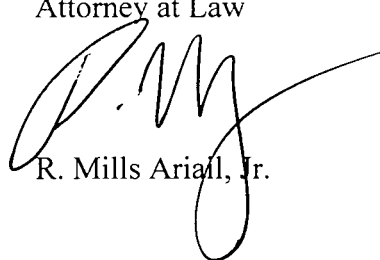
***Re: Notice of Intent to Appeal from John Edward Lyles v. State of South Carolina,
C.A. No.: 2012-CP-39-0886***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of Judge Miller's Order of Dismissal to be challenged on appeal. I must inform the Court of Appeals that as an officer of this Court, I am unable to set forth an arguable basis for asserting the determination by Judge Miller's Order of Dismissal that the PCR application was barred by the statute of limitations was improper. By copy of this letter, I am specifically advising Mr. Lyles that he should notify this Court, in writing, no later than twenty (20) days from the date of this letter, of any arguable basis the Petitioner may wish to assert that the determination that the PCR application was improper as required by Rules 203(d)(1)(B) and 243 of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving counsel for the State of South Carolina, the Pickens County Solicitor's Office, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RECEIVED

FEB 03 2014

S.C. SUPREME COURT

RMAjr/dcd
Enclosures (as stated)

cc: Pickens County Clerk's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

Karen C. Ratigan
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-11549

John Edward Lyles
SCDC #275083
Tyger River Correctional Institution
100-200 Prison Road
Enoree, SC 29355

Pickens County Solicitor's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-39-0886

John Edward Lyles,..... Appellant,
SCDC #275083

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

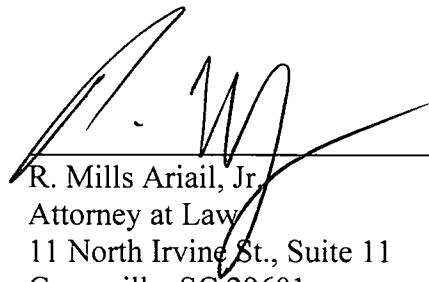
John Edward Lyles appeals the Honorable Edward W. Miller's Order of Dismissal dismissing Lyle's application for post-conviction relief. On November 4, 2013, the Honorable Edward W. Miller signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 16, 2014. A copy of Judge Miller's Order is attached.

RECEIVED

FEB 03 2014

S.C. SUPREME COURT

Greenville, South Carolina
January 30, 2014



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Attorney for John Lyles

Other Counsel of Record and Interested Parties:

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM PICKENS COUNTY
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Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-39-0886

John Edward Lyles,..... Appellant,
SCDC #275083

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this ___ day of January, 2014 I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Pickens County Solicitor's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

Denise Tanner LaBeck

Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.

January 30, 2014
Greenville, SC

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

CASE NO: 2012CP3900886

IN THE COURT OF COMMON PLEAS

John Edward Lyles vs. State of South Carolina

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:

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
JAN 14 A 9:27

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this January 14, 2014 , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Deputy

Harold P Welborn, Jr. - Clerk of Court

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) 2013 NOV - 9) P 2012 CP-39-0886
John Edward Lyles,)
S.C.D.C. No. 275083,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 14, 2012. The Respondent made its return and motion to dismiss on September 11, 2012. A hearing was convened at the Pickens County Courthouse on October 21, 2013 at which time the Applicant was present in court and represented by R. Mills Ariail, Jr., Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss on two grounds: (1) the expiration of the statute of limitations and (2) the presumption against successive PCR applications.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Clerk of Court for Pickens County. The Applicant was indicted at the May 2008 term of the Pickens County Grand Jury for distribution of cocaine base (crack cocaine) (2008-GS-39-1100). He was represented by Scott D. Robinson, Esquire.

After the State called the case to trial, the Applicant was convicted of distribution of

Handwritten initials

crack cocaine, second offense. On July 23, 2008, the Honorable Alexander S. Macaulay sentenced the Applicant to fifteen years, consecutive to the sentence he was already serving. The Applicant did not appeal.

2008-CP-39-1914

The Applicant filed a PCR application on November 19, 2008 (2008-CP-39-1914). The Applicant raised the following issues:

1. Ineffective assistance of counsel;
 - a. Failed to file an appeal.
2. "Informant is undependable due to his crack addiction."
3. "[L]ack of quantity of drug seized."

An evidentiary hearing was convened on November 9, 2009 at the Pickens County Courthouse. Kelvin R. Kearse, Esquire represented the Applicant. The Honorable G. Edward Welmaker issued an order dated December 14, 2009 and filed December 18, 2009 in which he: (1) granted a review of the Applicant's appeal issues pursuant to White v. State¹ and (2) denied and dismissed all other issues.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal by filing both a Petition for Writ of Certiorari and an Anders² Brief of Appellant Pursuant to White v. State. In an opinion dated October 10, 2011, the Supreme Court granted the petition for writ of certiorari and dismissed appeal issues.

2011-CP-39-0057

The Applicant filed a PCR application on January 18, 2011 (2011-CP-39-0057). The

¹ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Subject matter jurisdiction

The State submitted a return and motion to dismiss, arguing the application was untimely and successive. The Honorable Robin B. Stilwell issued a conditional order of dismissal dated March 23, 2011 and filed March 29, 2011. The Applicant filed a response in which he stated that he was raising newly-discovered evidence that the State had made a plea recommendation in his case. Judge Stilwell issued a final order of dismissal dated July 12, 2011 and filed July 20, 2011.

The Applicant filed a notice of appeal. The South Carolina Supreme Court required the Applicant – 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 October 14, 2011, the Supreme Court found the Applicant failed to meet his burden in this regard.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Lafler v. Cooper, 132 S. Ct. 1376 (2012) and Missouri v. Frye, 132 S. Ct. 1399 (2012) support a claim for relief because the Applicant “was deprived of knowing the existence of a negotiated plea agreement for a sentence of 10 years suspended to mandatory minimum 5 years with probation.”
2. Due process violation.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject conviction, the Applicant’s records from the South Carolina Department of Corrections, the prior

PCR orders and opinions, and the pleadings and makes the following findings of fact and conclusions of law:

A.

This Court finds the current PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). 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 Applicant was convicted of the offenses he challenges in this application on July 23, 2008. The Applicant was therefore required to file his application before July 23, 2009. This application was filed on June 14, 2012, which was more than two years and ten months after the statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. The Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's trial are summarily dismissed.

B.

This Court further finds the current application should be dismissed because it is successive to the previous applications for PCR. 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 has failed to present any reasons why he could not have raised the current allegations in his previous PCR applications. Accordingly, the Applicant has failed to carry his burden of proof. See Aice, 305 S.C. at 450, 409 S.E.2d at 394 (holding the Applicant bears the burden of showing that the allegations could not have been raised previously).

C.

The Applicant argued he was entitled to a hearing on his application under Lafler v. Cooper, 132 S. Ct. 1376 (2012) and Missouri v. Frye, 132 S. Ct. 1399 (2012) because there was an un conveyed plea offer in his case. This Court finds this argument is without merit. First, the Applicant raised the issue of an un conveyed plea offer in the response to his second PCR application and this issue was addressed in the final order in that case. As such, this argument is successive. Second, the Applicant failed to demonstrate that Lafler and Frye could be applied

retroactively. Accordingly, this Court finds the Applicant failed to meet his burden of proving this argument allowed him to circumvent the expiration of the statute of limitations or the presumption against successive PCR applications.

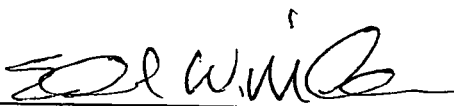
IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds (1) the Applicant failed to file his PCR application within the time mandated by the Uniform Post-Conviction Procedure Act and (2) the Applicant raised grounds for relief in this application that could have been raised in the prior PCR application. 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 the 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.

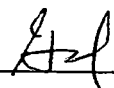
IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this ____ day of 11/4, 2013.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

_____, South Carolina.

██████████
R. MILLS ARIALL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

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