

EXHIBIT
C

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	DOCKET NO.: 2013-CP-38-0183
FREDERICK HOWELL, #310890,)	
Applicant,)	
v.)	RESPONSE TO CONDITIONAL
STATE OF SOUTH CAROLINA,)	ORDER OF DISMISSAL
Respondent,)	

The Applicant, by and through his Attorney Jonathan D. Waller, would respectfully respond to the State's Conditional Order of Dismissal by submitting the below stated information in support of his claim of ineffective assistance of PCR counsel for failure to appeal denial of Applicant's previous PCR application.

1. Ineffective assistance of PCR Counsel

On August 18, 2005, the Applicant entered a plea of guilty to Burglary (1st Degree) in front of the Honorable James C. Williams, Jr. The Honorable James C. Williams, Jr., sentenced the Applicant to a term of twenty-two years for Burglary (1st Degree).

The Applicant filed an Application for Post-Conviction Relief on March, 31, 2007. The Respondent made its Return on or about April 16, 2008. An evidentiary hearing was convened on June 8, 2009, at the Orangeburg County Courthouse. A final Order of Dismissal filed by The Honorable Diane S. Goodstein on January 5, 2010. While the Applicant was informed of the time limit to file a notice of intent of appeal his PCR attorney failed to do so.

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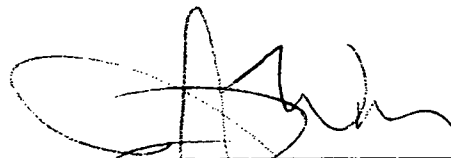
Applicant subsequently filed a 2nd Application for Post Conviction Relief on January 28, 2010. That 2010 application was dismissed by the Honorable Edgar W. Dickson on August 17, 2012 based on the fact that it was successive, beyond the statute of limitations, and for failure to state a claim for which relief could be granted. One of the allegations made by Applicant in the 2010 application was Ineffective assistance of post-conviction relief counsel. While ineffective assistance of PCR counsel is not normally recognized as a cause of action, the South Carolina Supreme Court has held that failure of PCR counsel "to seek review" of denial of PCR Application "sufficiently states a claim of ineffective assistance." Austin v. State of South Carolina, 409 S.E.2d 395 (1991). The Court held that an evidentiary hearing is necessary to review the "issue of whether in fact the petitioner requested and denied an opportunity to seek appellate review." Id. Upon information and belief, Applicant's 2010 application was submitted by him without the advice of counsel, as was his appeal of the dismissal of that application. As such, Applicant contends that he never had the opportunity to appeal his 2007 application and was denied this because he was denied the appointment of an attorney for the 2010 application.

The Court in Austin outlined the process that is required when an Applicant has been denied his right to appellate review. If, at an evidentiary hearing, the Circuit Court determines that an applicant is denied that right, he may then petition to the Supreme Court to review whether that applicant was prejudiced by the failure to obtain review of a meritorious issue. The Court will use an analysis akin to that of Strickland v. Washington, 466 U.S. 668. See Id.

In a related opinion, Aice v. State of South Carolina, 409 S.E.2d 392 (1991), the Court held that once an applicant has had “a full bite” at the apple, successive applications would only be entertained in extreme circumstances. The court in Aice also held that Austin was “harmonized” with the Aice case in that Austin never had his full bite at the apple such as Supreme Court Rule 50(6) allows for. Id. at 395. In the instant case, Frederick Howell has never had the opportunity to have his “full bite” at the apple.

The Applicant would respectfully submit that he is entitled to an evidentiary hearing based upon his previous PCR attorney failing to seek appellate review of the denial of his 2007 application, was not allowed a review of his 2007 application with regards to his 2010 application, and would respectfully request that this Court allow the Applicant to proceed to a motion or full evidentiary hearing regarding this issue.

Respectfully submitted.



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October 29, 2013
Columbia, South Carolina