

STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

Antonio L. Boykin, #332153 )

Plaintiff )

v. )

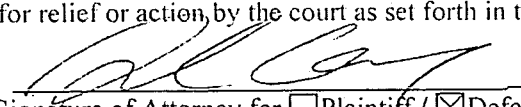
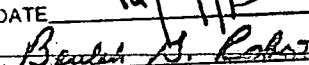
State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2013-CP-14-302

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

|  |  |
|--|--|
| Plaintiff's Attorney:<br>Antonio L. Boykin, #332153, Bar No.<br>Address:<br>Lieber Correctional Institution<br>Ridgeville, SC 29472<br>phone:        fax:<br>e-mail:        other:   | Defendant's Attorney:<br>Daniel Gourley, Bar No.<br>Address:<br>P.O. Box 11549<br>Columbia, SC 29211<br>phone: (803) 734-3737 fax: (803) 734-4113<br>e-mail:        other:   |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)   |  |
| <b>SECTION I: Hearing Information</b>  |  |
| Nature of Motion:<br>Estimated Time Needed:        Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO  |  |
| <b>SECTION II: Motion/Order Type</b>   |  |
| <input type="checkbox"/> Written motion attached<br><input checked="" type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action, by the court as set forth in the attached proposed order.   |  |
| <br>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant  | November 21, 2013<br>Date submitted  |
| <b>SECTION III: Motion Fee</b>   |  |
| <input type="checkbox"/> PAID - AMOUNT:<br><input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br>(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter:<br><input type="checkbox"/> Other: |  |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:   | JUDGE: _____<br>CODE: _____ Date: _____  |
| <b>CLERK'S VERIFICATION</b>  |  |
| Collected by: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: _____  | Date Filed: _____<br>CERTIFIED TRUE COPY<br>OF ORIGINAL FILED IN THIS OFFICE<br>DATE <u>12/4/13</u><br><br>CLERK OF COURT<br>CLARENDON COUNTY, SC |

BEULAH G. ROBERTS  
 CLERK OF COURT  
 CLARENDON COUNTY, SC  
 2013 DEC -4 AM 8:47

STATE OF SOUTH CAROLINA )  
 COUNTY OF CLARENDON )  
 Antonio Boykin, #332153, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-14-302

**CONDITIONAL ORDER  
 OF DISMISSAL**

BEULAH S. ROBERTS  
 CLERK OF COURT  
 CLARENDON COUNTY, SC  
 2013 DEC -4 AM 8:47

This matter comes before this Court by way of an application for post-conviction relief filed July 26, 2013. In its Return, Respondent requests that the action be summarily dismissed.

**PROCEDURAL HISTORY**

Before this Court are the records of the Clarendon County Clerk of Court regarding the subject convictions and Applicants records from the South Carolina Department of Corrections. The records before this Court reflect the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Clarendon County. Applicant was indicted at the March 2008 term of the Clarendon County Grand Jury for Criminal Sexual Conduct-First Degree, Kidnapping, Possession of a Weapon During Violent Crime, and Burglary-First Degree (2008-GS-14-0059). Applicant was also indicted at the March 2008 term of court for Criminal Sexual Conduct First Degree, Kidnapping, Possession of a Weapon During Violent Crime (2008-GS-14-0060).<sup>1</sup> He was represented by Deborah Butcher, Esquire. On December 3, 2008, the Applicant pled guilty before the Honorable Howard P. King. He was sentenced as follows:

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED IN THIS OFFICE  
 DATE 12/11/13  
*Beulah S. Roberts*  
 CLERK OF COURT  
 CLARENDON COUNTY, SC

<sup>1</sup> Indictment 2008-GS-14-0060 bears a notation by the Honorable Howard P. King that the indictment was amended on the record to reflect the date of May 6, 2007, in Counts 2 and 3.

- For Criminal Sexual Conduct First Degree (2008-GS-14-0059), Applicant was sentenced to twenty year term of imprisonment
- For Kidnapping (2008-GS-14-0059), Applicant was sentenced to twenty year term of imprisonment.
- For Possession of a Weapon During Violent Crime (2008-GS-14-0059), Applicant was sentenced to five year term of imprisonment.
- For Criminal Sexual Conduct- First (2008-GS-14-0060), Applicant was sentenced to twenty year term imprisonment.
- For Kidnapping (2008-GS-14-0060), Applicant was sentenced to twenty year term of imprisonment, to be served consecutively.
- For Possession of a Weapon during Violent Crime (2008-GS-14-0060), Applicant was sentence to a five year term of imprisonment.

The Applicant did not appeal his guilty plea or sentence.

Applicant filed his first post-conviction relief application on June 22, 2009 alleging that he was being held in custody unlawfully due to the following allegations:

1. Ineffective assistance of counsel
  - a. "Counsel failed to do any pretrial investigation"
2. Involuntary guilty plea
  - a. "Counsel erroneous advice"
3. "Denial of 6, 14<sup>th</sup> Amendment"
  - a. "Counsel failed to protect my rights."

The State made its return on September 24, 2009. An evidentiary hearing was convened on April 28, 2011 at which Applicant was present and represented by Scott L. Robinson, Esquire. In a written Order dated September 18, 2011, the Honorable Judge W. Jeffrey Young, denied and dismissed the application with prejudice. A timely notice of appeal was filed. In a written Order, dated July 11, 2013, the South Carolina Supreme Court denied the petition for writ of certiorari and granted counsel's request to withdraw. The Remittitur was issued on July 31, 2013.



In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
2. Due Process Right
  - a. 6<sup>th</sup> and 14<sup>th</sup> amendment
3. Ineffective Assistance of PCR Counsel

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the application for post-conviction relief must 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(s) he challenges in this Application on December 3, 2008. This application was filed on July 26, 2013, 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, this Court finds that the Application for post-

conviction relief is summarily dismissed for failure to file within the time mandated by statute and because it is successive.

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).

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), SCRPC, the Court intends to summarily dismiss these claims as barred by *res judicata*.

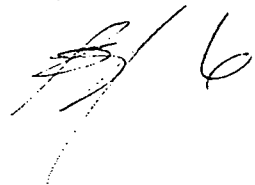
Furthermore, Applicant contends that under the United States Supreme Court's recent decision in Martinez v. Ryan, No. 10-1001 (S. Ct. filed March 20, 2012), he is able to file a successive state PCR action alleging ineffective assistance of previous collateral counsel. This Court finds this contention 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

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“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 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.

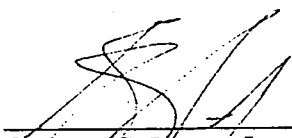


Finally, because Applicant has failed to set forth any reason he could not have raised the current allegations in his previous application other than to allege PCR counsel was ineffective in failing to raise them, the current application is in fact successive in nature. Accordingly, this application 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).

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 Sumter 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 22 day of Nov., 2013.

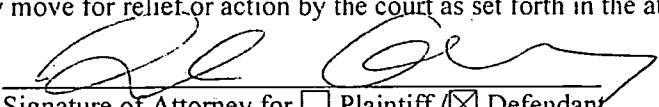
  
\_\_\_\_\_  
GEORGE C. JAMES, JR.  
Chief Judge for Administrative Purposes  
Third Judicial Circuit

Sumter, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )  
 )  
ANTONIO BOYKIN, #332153 )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT  
 CASE NO.: 2013-CP-14-00302

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

|  |  |
|--|--|
| Plaintiff's Attorney:<br>Antonio Boykin, #332153, Bar No. _____<br>Address:<br>Lieber Correctional Institution<br>Ridgeville SC, 29472<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____   | Defendant's Attorney:<br>Daniel Gourley, Bar No. _____<br>Address:<br>PO Box 11549<br>Columbia, SC 29211<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)   |  |
| <b>SECTION I: Hearing Information</b>  |  |
| Nature of Motion: _____<br>Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO   |  |
| <b>SECTION II: Motion/Order Type</b>   |  |
| <input type="checkbox"/> Written motion attached<br><input checked="" type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.  |  |
| <br>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant   | February 10, 2014<br>Date submitted  |
| <b>SECTION III: Motion Fee</b>   |  |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason)  |  |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |
| <b>JUDGE'S SECTION</b>   |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____   | JUDGE CODE _____<br>Date: _____  |
| <b>CLERK'S VERIFICATION</b>  |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____  |  |

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
Antonio Boykin, #332153 )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

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IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-14-00302

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 26, 2013. The Respondent made its return on November 19, 2013 requesting the application be summarily dismissed.

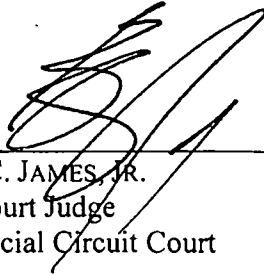
Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed November 22, 2013 and filed December 4, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (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 an Affidavit of Service dated December 23, 2013, serving the above mentioned Conditional Order of Dismissal on the Applicant.

The Applicant has failed to respond to either the Respondent's motion to Dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.




**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.

**AND IT IS SO ORDERED** this 11 day of FEB, 2014.



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

, South Carolina.

