



successive, or barred by the doctrine of laches. Specifically, the Court finds the doctrine of laches bars Applicant's claim he did not knowingly and voluntarily waive his right to an appeal from his prior PCR. Applicant could have easily determined counsel did not file a notice of appeal well before March 2013. His failure to seek information about his appeal for well over ten (10) years after his hearing is inconsistent with a diligent assertion of his right to appeal. See Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (quoting Hallums v. Hallums, 296 S.C. 195, 371 S.E. 525 (1988)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("Laches connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner." (citing Chambers of South Carolina, Inc. v. County Council for Lee County, 315 S.C. 418, 434 S.E.2d 279 (1993))). The Court finds it would be inappropriate to call upon Respondent to defend the constitutionality of Applicant's convictions after such a long delay. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.").

Furthermore, the Court declines to extend Austin<sup>1</sup> to this factual situation. See Aice, 305 S.C. at 452, 409 S.E.2d at 395 ("Austin is limited to its particular factual situation"). Applicant voluntarily withdrew his first PCR application (96-CP-13-132). Applicant's second PCR application (99-CP-13-45) alleged grounds that could have been raised in the first application, and were thus waived upon the voluntarily withdrawal. The Court cannot discern how Applicant is entitled to an appeal from his third PCR (01-CP-13-402) where that application merely challenged the performance of the second PCR counsel. The PCR rules only provide for a single procedural adjudication on an original application. Id. (citing Gamble v. State, 298 S.C. 176,

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<sup>1</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

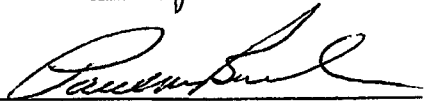
379 S.E.2d 118 (1989)). Under the facts of this case, the Court finds Applicant has had his “one procedural ‘bite’ at the apple.” Id. Accordingly, the Court finds Applicant has not shown a sufficient reason why the conditional order should not become final.

Applicant also filed a document titled “Request for Judge to Subpoena Witnesses for P.C.R. Hearing” on April 21, 2014. The Court finds this request is moot in light of the Court’s decision to dismiss this application without a hearing. Furthermore, Applicant’s request for subpoenas is entirely inappropriate because Applicant has in no way indicated how these witnesses are relevant to his application. See S.C. Code Ann. § 17-27-150(a). Therefore, Applicant’s request to subpoena these individuals is denied.

**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 notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant’s counsel to file and serve notice of appeal. The Applicant’s attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 18<sup>th</sup> DAY OF May, 2014.

  
THE HONORABLE PAUL M. BURCH  
Chief Judge for Administrative Purposes  
Fourth Judicial Circuit

Chesterfield, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated L.T. McCurry (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF McCormick

AFFIDAVIT OF PERSONAL SERVICE

On this 31<sup>st</sup> day of March 2014, I served the **Conditional Order of Dismissal**, on Inmate **Billy Lee Lisenby, Jr.**, SCDC Inmate # **200273**, by delivering personally, and leaving a copy of the same at Lee Correctional Institution, McCormick. Deponent is not a party to this action.

s/ L.T. McCurry  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 31<sup>st</sup> day of March, 2014

Penny G. Maden (L.S.)  
Notary Public for South Carolina

My Commission Expires: Feb 28, 2018

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (McCormick Correctional Institution), McCormick, McCormick County, SC this 31<sup>st</sup> day of March, 2014.

s/ Billy Lee Lisenby Jr.  
Inmate  
SCDC Inmate #: 200273

2014 APR 7 PM 3:39 TRUE COPY  
FAYE L. COLLETS  
CLERK OF COURT  
WESTERFIELD COUNTY, SOUTH CAROLINA  
Attest  
Joyce J. Bellard

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