

The Supreme Court of South Carolina

Appeal From Chesterfield County Court of Common Pleas  
The Honorable Judge Paul Burch

Appellate Case No. 2014-001321

**RECEIVED**

Billy Lee Lisenby JR, #200273 ..... Appellant

JUL 11 2014

vs.

South Carolina Department of Corrections ..... Respondent

**S.C. SUPREME COURT**

Explanation

Dated: July 3<sup>rd</sup> 2014

Billy Lee Lisenby JR,

#200273

P.O. Box 205

Lieber C. I

Ridgeville, S.C. 29472

Attorney General

P.O. Box 11549

Columbia, S.C. 29211

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Citation to legal Authority

Alice v. State 305 S.C. 453, 409 S.E. 2d 395 (1991) . . . . .	Page 3
§17-27-45 . . . . .	Page 3
Odum v. State, 337 S.C. 256, 253 S.E. 2d 753 (1999) . . . . .	Page 3
Wilson v. State, 348 S.C. 215, 559 S.E. 2d 581 . . . . .	Page 3

## Explanation

Appellant did not find out his attorney didn't appeal the denial of his P.C.R. until March 13, 2013. There after he filed a P.C.R. There is no statute of limitations for when an Applicant did not knowingly and voluntarily waive his right to appeal from his P.C.R. application. See Exhibit #1

## Argument

The Lower Courts were improper because based on *Alice v. State* 305 S.C. 448, 409 S.E.2d 392 and *Austin v. State* 305 S.C. 453, 409 S.E. 2d 395 (1991) Appellant has a right to appeal the denial of P.C.R. The P.C.R statute §17-27-45 shows the lower court is in error. The Supreme Court has carved out an exception to the statute of limitations for when an Applicant did not knowingly and voluntarily waive his right to appeal from his PCR application. *Odum v. State*, 337 S.C. 256, 523 S.E. 2d 953 (1999). The Supreme Court like wise found that the statute does not apply where the Applicant does not knowingly and voluntarily waive his right to appeal his trial conviction. Further The Statute of limitations defense does not apply to a claim that an Applicant was denied their right to a direct appeal or denied their right to have a review of denial of a P.C.R. See *Milson v. State*, 348 S.C. 215, 559 S.E. 2d 581.

In this case the statute of limitations does not apply.

## Facts

Petitioner was denied his right to appeal his P.C.R. denial. Petitioner's attorney Kenneth Martin, advised him that he filed a Notice of Appeal in his behalf after his September 9, 2002 P.C.R. hearing. Petitioner's cousin Yolanda Lindsey even told Petitioner that MR. Martin filed this. MRS. Lindsey was MR. Martin's secretary.

Petitioner has been trying to get in touch with MR. Martin for over (5) years. But the disciplinary Counsel states he is out of work due to medical capacity. On March 13, 2013 is when Petitioner actually found out that an appeal had <sup>not</sup> been filed. [See Exhibit #1 From The Supreme Court.]

Certificate of Counsel

The undersigned hereby certifies that the enclosed contains all material proposed to be included by any of the parties and not any other material.

Date: July 3<sup>rd</sup> 2014

[s] Billy Lee Kirby, Jr.  
Billy Lee Kirby, Jr. #200273  
P.O. Box 205  
Lieber C. T.  
Ridgelyville S.C. 29472

The Supreme Court of South Carolina

Appeal From Chesterfield County Court of Common Pleas

The Honorable Judge Paul Buech

Appellate Case NO. 2014-001321

Billy Lee Lisenby JR, #200273 ..... Appellant

vs.

South Carolina Department of Corrections ..... Respondent

PROOF OF SERVICE

I swear under penalty of perjury that I have served one copy of  
The enclosed "Explaination" on the following:

Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Billy Lee Lisenby JR  
Billy Lee Lisenby JR, #200273  
P.O. Box 205  
Lieber C. I  
Ridgeville, S.C. 29472

Dated: July 3<sup>rd</sup>, 2014

LISENBY, BILLY (00200273)  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899-9000



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

March 13, 2013

Mr. Billy Lee Lisenby, Jr. #200273  
200 Prison Road  
SMU #48  
Tyger River Correctional Inst.  
Enoree, SC 29335

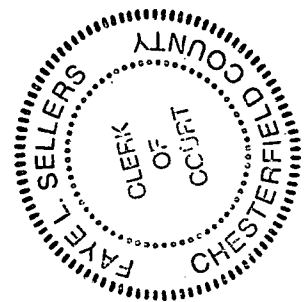
Re: Lisenby v. State  
2001-CP-13-00402

Dear Mr. Lisenby:

This will acknowledge your letter received in this office on March 13, 2013. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in your behalf in the above matter.

Very truly yours,

CLERK



/bs

A True Copy Attest  
*Faye L. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

[Exhibit #1]

2013 JUN 24 AM 9 38  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

Billy Lee Kiserby, JR, #200200

Lieber C. I

PO Box 205

Ridgelyville, SC. 29112

Ams

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The Supreme Court of South Carolina

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Columbia, S.C. 29211

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LIEBER CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS

THE DEPARTMENT OF CORRECTIONS HAS NOT  
INSPECTED OR RECORDED THIS ITEM; THEREFORE,  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.

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