

The Supreme Court  
Daniel E. Shearouse, Clerk  
P.O. Box 11330  
Columbia, SC 29211

RECEIVED

JUL 16 2014

S.C. SUPREME COURT

RE: Petition For a Writ of Certiorari  
C/a. 2010-CP-01-0164

Dear Mr. Shearouse:

Enclosed for filing please find Petitioner's  
Petition For a Writ of Certiorari, Application  
to Proceed without prepayment of Cost and Affidavit  
in Support thereof, Proof of Service, along with  
Stamp-filed letter from the Abbeville Clerk of Court  
and Final Order.

Truly Yours,

Dated: July, 11<sup>th</sup>, 2014

S/ Sergio Marshall  
Sergio Marshall #285653  
MCF 386 Redemption Way  
M<sup>c</sup> Cormick, SC 29899

CC: Office of the Attorney General

LEGAL MAIL **RECEIVED**

JUL 1 1954

U.S. SUPREME COURT

The State of South Carolina  
In The Supreme Court

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Appeals From Abbeville County  
Court of Common Pleas

Engene C. Griffith, Jr, Circuit Court Judge

C/a. No. 2010-CP-01-0164

Sergio Marshall . . . . . Petitioner,  
V.

State of South Carolina . . . . . Respondents,

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Petition For Writ  
of Certiorari

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I, Sergio Marshall, appeal the order of the  
Honorable Engene C. Griffith, Jr. dated 13<sup>th</sup>  
day of February 2012, attached. I received same  
on or about 26<sup>th</sup> day of June 2014.

Date: July 11<sup>th</sup> 2014

S/ Sergio Marshall  
Sergio Marshall #285653  
MCCF 386 Redemption Way  
MC Cormick, SC 29899

The State of South Carolina  
In the Supreme Court

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Appeals From Abbeville County  
Court of Common Pleas

Engene C. Griffith, Jr., Circuit Court Judge

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C/a. No: 2010-CP-01-0164

Sergio Marshall..... Petitioner,  
V.

State of South Carolina..... Respondents,

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Proof of Service

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I hereby certify that I have served  
the Petition for a Writ of Certiorari, by U.S.  
mail, postage prepaid, and addressed to: Office  
of the Attorney General.

Dated: July 11<sup>th</sup>, 2014

Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211

S/ Sergio Marshall  
Sergio Marshall #285653  
MCCF 386 Redemption Way  
McCormick, SC 29899

LEGAL MAIL

The State of South Carolina  
In the Supreme Court

Appeals From Abbeville County  
Court of Common Pleas

Engene C. Griffith, Jr., Circuit Court Judge

C/A. No. 2010-CP-01-0164

Sergio Marshall..... Petitioner,  
V,

State of South Carolina..... Respondents,

Application to Proceed  
Without Prepayment of Cost  
and Affidavit In Support  
Thereof

I hereby apply for leave to proceed in this  
action without prepayment of fees or cost or security  
thereof in support of my application I declare under  
penalty of perjury that the following facts are true:

- 1.) I am the petitioner in this action and I believe I am entitle to redress.
- 2.) Because of my proverty I am unable to pay the cost of said proceedings or give security thereof.

Sergio Marshall  
Sergio Marshall #285653  
MCC# 386 Redemption Way  
McCormick, SC 29899

Sworn to before me this  
10<sup>th</sup> day of July, 2014

Penny L. Mota (L.S)  
Notary Public of South Carolina

my Commission Expires: Jul 28, 2018

LEGAL MAIL

Abbeville Clerk of Court  
P.O. Box 99  
Abbeville, SC 29620

RE: 2010-CP-01-0164

Sergio Marshall v. State of South Carolina

EMILY McMAHAN  
CLERK OF COURT

2014 JUN 26 AM 9:00

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

Greetings Ms. McMahahan:

I am currently having trouble concerning the judgement that was made in the above-referenced case: 2010-CP-01-0164. It has been over a period of two years since I received the proposed Final Order from the Attorney General's Office.

Could you please provide me with a copy of the PCR-application and inform me if a Final Order was signed by the Judge? Also please include the Certificate of Service if one was attached.

6-26-14  
COPIES  
OF  
BOTH  
ENCLOSED

I was never served a Final Order of Dismissal from the Attorney General and would like to know the outcome to start my appeal.

Thank You,

S/ Sergio Marshall

Sergio Marshall #285653  
MCCF 386 Redemption Way  
McCormick, SC 29899

Dated:

6-23-14

STATE OF SOUTH CAROLINA )  
COUNTY OF ABBEVILLE )

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Sergio Marshall, #285653, )  
Applicant, )

2010-CP-01-0164

v. )

State of South Carolina, )  
Respondent. )

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE  
2012 FEB 24 AM 9 06  
EMILY Y MCMAHON  
CLERK OF COURT

FINAL ORDER OF DISMISSAL  
**TRUE COPY**  
BY *Emily Y McMahon*  
ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2010. The Respondent (the State) made its Return and Motion to Dismiss on December 6, 2011, requesting that 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 dated December 8, 2011, 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 is an Affidavit of Service dated January 6, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Applicant's Response to Conditional Order of Dismissal," the Applicant argues the State did not dispose of his case within one-hundred eighty days of his arrest. The failure to follow administrative procedures regarding the disposition of indictments or the filing of the same does not affect the subject matter jurisdiction of the trial court to hear a particular case.

*See State v. Culbreath*, 282 S.C. 38, 316 S.E.2d 681 (1984). The Applicant also argues the case of *Evans v. State*<sup>1</sup> was not available as evidence for his first PCR (2003-CP-01-0109). The Applicant further states the State cannot produce a sufficient indictment or impanelment documents and because of this, he is deprived of due process. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. The Applicant's indictment was true billed and signed by the foreman of the Abbeville County Grand Jury. Attached to this Order is a copy of the Applicant's indictment as proof that the Court of General Sessions of Abbeville County had jurisdiction to accept the Applicant's guilty plea.

The Applicant has further shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). 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. *Peioquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 15, 2002. Therefore, the Applicant was required to file for post-conviction relief by July 16, 2003.<sup>2</sup> This Application was filed on May 21, 2010, which was well after the statutory filing period had expired.

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<sup>1</sup>*Evans v. State*, 363 S.C. 495, 611 S.E.2d 510 (2005) (holding a defendant has a constitutional right to demand that a grand jury consider the criminal allegations against him and also have access to the grand jury impanelment documents)

<sup>2</sup>Even assuming this Court accepted *Evans v. State* as 'newly discovered evidence', which it does not, the Applicant

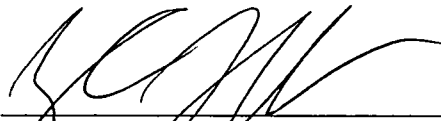


Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 13<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Presiding Judge  
Eighth Judicial Circuit

Newberry, South Carolina.

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would have had to file his PCR application by April 5, 2006 (one year after Evans v. State was decided).



STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Sergio Marshall, #285653  
Applicant,

2010-CP-01-0164

v.  
State of South Carolina,  
Respondent.

CONDITIONAL ORDER OF DISMISSAL

**TRUE COPY**  
BY *[Signature]*  
ABBEVILLE COUNTY CLERK OF COURT

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE  
DEC 16 AM 9:30  
EMILY Y MCMAHON  
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed  
May 21, 2010.

**PROCEDURAL HISTORY**

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. The Applicant was indicted at the October 2001 term of the Abbeville County Grand Jury for Armed Robbery, Murder, Grand Larceny of a Motor Vehicle, Possession of a Pistol under the age of 21, and Possession of a firearm during the Commission of a Violent Crime (2001-GS-01-0371). Darren Haley, Esquire, represented him. On July 15, 2002, the Applicant pled guilty to all charges as indicted. The Honorable Wyatt T. Saunders, Jr. sentenced the Applicant to confinement for a period of thirty (30) years for Armed Robbery, thirty (30) years for Murder, five (5) years for Grand Larceny of a Motor Vehicle, five (5) years for Possession of a Pistol under the age of 21, and five (5) years for Possession of a firearm

*[Handwritten signature]*

during the Commission of a Violent Crime. All sentences run concurrently. The Applicant did not appeal his conviction or sentence.

2003-CP-01-0109

The Applicant subsequently filed an application for PCR on April 21, 2003. The State filed its Return on December 8, 2004. On August 5, 2005, an evidentiary hearing was held before the Honorable James W. Johnson, Jr., at which the Applicant was present and was represented by Robert J. Tinsley, Esquire. By Order filed August 25, 2005, Judge Johnson denied and dismissed the application.

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

1. "Newly discovered evidence"
2. "Subject Matter Jurisdiction"
3. "Due Process Violation/Ineffective Assistance of Counselor"

Incorporated herein are the Clerk of Court records, the South Carolina Department of Corrections' records and the Applicant's prior PCR by reference. The Respondent reserves the right to amend this information upon receipt of any relevant materials.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on the Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds that this Application for Post-Conviction Relief should 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 judgement 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 was convicted of the offense(s) she challenges in this Application on July 15, 2002. Therefore, the Applicant was required to file his application for PCR by July 16, 2003. This Application was filed on May 21, 2010, well after the one-year statutory filing period had expired.

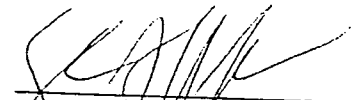
A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary 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 judgement as a matter of law."

This Court further finds the Applicant cannot satisfy the requirements of the Lanier test for newly discovered evidence. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. The Applicant has failed to set forth with any specificity what the alleged newly discovered evidence is that would entitle him to a successive PCR action. Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute, for being successive, and for not properly alleging "newly discovered evidence."

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 with the Abbeville County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 5<sup>th</sup> day of December, 2011.

  
EUGENE C. GRIFFITH, JR.  
Chief Administrative Judge  
Eighth Judicial Circuit

Newberg, South Carolina

Sergio Marshall # 285653  
MCCF 386 Redemption Way  
McComick, SC 29899

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

LEGAL MAIL

The Department of Corrections has  
not censored this mail. Therefore,  
the Department does not assume re-  
sponsibility for its content.

**RECEIVED**

MCCI  
MAIL ROOM

JUL 11 2014