

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

W. JEFFERY YOUNG, CIRCUIT COURT JUDGE

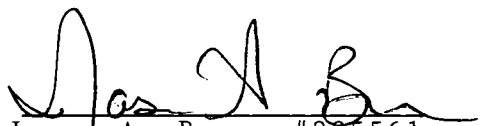
Case No. 2013-CP-14-00019

State of South Carolina, Respondent,
v.
Jason A. Brown, #325561, Appellant.

NOTICE OF APPEAL

Jason A. Brown appeals the order of the Honorable W. Jeffery Young dated July 30, 2014. Appellant received written notice of entry of this order on July 11, 2014.

This the 30 day of July 2014.

S/: 
Jason A. Brown, #325561
Lee Corr. Inst. Ric B 269
990 Wisacky Highway
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

PCR

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

RECEIVED

W. JEFFERY YOUNG, CIRCUIT COURT JUDGE

AUG 04 2014

S.C. SUPREME COURT

Case No. 2013-CP-14-00019

State of South Carolina, Respondent,
v.
Jason A. Brown, #325561, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on W. Jeffery Young by depositing a copy of it in the United States Mail, postage prepaid, on July - 30, 2014, addressed to his attorney of record, Daniel Gourley, PO Box 11549, Columbia, SC 29211.

This the 30 day of July 2014.

S/: Jason A Brown
Jason A. Brown, #325561
Lee Corr. Inst. Ric B 269
990 Wisacky Highway
Bishopville, SC 29010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
JASON A. BROWN, #325561)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CASE NO.: 2013-CP-14-00019

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Jason A. Brown, #325561, Bar No. _____ Address: Lee Correctional Institution Bishopville, SC 29010 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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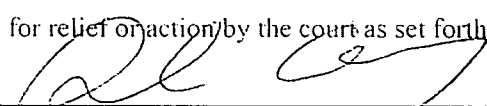
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

June 13, 2014
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

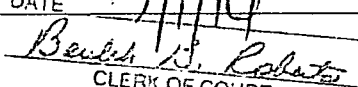
- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE <u>2156</u> Date: <u>6.22.14</u>
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CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 7/1/14

 CLERK OF COURT
 CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
 Jason A. Brown, #325561)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-14-00019

FINAL ORDER OF DISMISSAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 7/1/14
Beulah G. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

2014 JUL -1 PM 1:11
 BEULAH G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 16, 2013. The Respondent made its return on April 11, 2013, requesting the application be summarily dismissed based upon statute of limitations, successiveness, and failing to state a cognizable claim for PCR.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable George C. James, Jr., issued a Conditional Order of Dismissal signed April 17, 2013 and filed January 8, 2014, 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 March 20, 2014, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's response to the Conditional Order of Dismissal" and filed on February 24, 2014, the Applicant argues "that he is raising his issues under the new United States Supreme Court ruling in Martinez v. Ryan, 132 S.Ct. 1309 (2012). Applicant argues that although he withdrew his application for post-conviction relief, PCR Counsel was ineffective for failing to help him present his case in its most favorable light. Applicant argues

PCR Counsel intentionally ignored Applicant's repeated request for a "Motion for Reconsideration" and never let him know that he gave up his only "bite of the apple." Applicant argues PCR Counsel failed to meet with him prior to the evidentiary hearing. Furthermore, Applicant alleged an additional two amendments to his application. First, "PCR Counsel, Charles T. Brooks, III, was ineffective for failing to challenge Applicant's guilty plea." Second, "Did the Trial Court err in admitting evidence emanating from Applicant's arrest because the police officer's did not have Probable Cause to Arrest him?"

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

The Applicant contends he is able to file a successive state post conviction relief action alleging ineffective assistance of previous collateral counsel. The Respondent asserts this contention is without merit as the ruling in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state post conviction relief 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 “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.”).

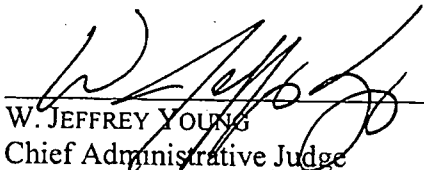
With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental “cause and prejudice” standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state post conviction relief 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.”). The South Carolina Supreme Court has found – in a published order – that “the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

This Court notes the Applicant pled guilty on December 6, 2007. As this action was filed on January 16, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case in his first PCR application on December 22, 2009, but instead chose to withdraw his application. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). (“[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

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 22 day of June, 2014.


W. JEFFREY YOUNG
Chief Administrative Judge
Third Judicial Circuit Court

Sumter, 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 C.M. - Toliver (*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 Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 20th day of March 2014, I served the Conditional Order of Dismissal, on Inmate Jason A. Brown, SCDC Inmate #325561, by delivering personally and leaving a copy of the same at Lee Correctional Institution. Deponent is not a party to this action.

s/ C.M. - Toliver

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 20th day of March, 2014

J. P. Brown (L.S.)
Notary Public for South Carolina

My Commission Expires: 09/10/2023

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Lee Correctional Institution), Bishopville, Lee County, SC this 20th day of March, 2014.

s/ Jason A. Brown
Inmate
SCDC Inmate #: 325561

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Jason A. Brown, #325561,)

2013-CP-14-00019)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 1/8/2014 **CONDITIONAL ORDER**
Benzah B. Roberts **OF DISMISSAL**
CLERK OF COURT
CLARENDON COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief filed January 16, 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, Applicant's records from the South Carolina Department of Corrections, and records from Applicant's previous application for post-conviction relief. The records before this Court reflect that the Applicant is presently confined in the South Carolina The Applicant was true bill indicted at the March 2007 term of the Clarendon County Grand Jury under a three count indictment for (1) Murder, (2) Arson, and (3) Grand Larceny (2007-GS-14-0056). Applicant was represented by Scott L. Robinson, Esquire. On December 6, 2007, the Applicant pled guilty as indicted to Murder, Arson, and Grand Larceny. The Applicant was sentenced by the Honorable John M. Milling to a negotiated sentence of thirty years imprisonment for Murder, ten years imprisonment for Arson and five years imprisonment for Grand Larceny (<\$5000); with the sentences were to be served concurrently. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for post-conviction relief on August 5, 2008 (2008-CP-14-400). In his application, Applicant asserted:

1. Ineffective assistance of counsel;
 - a. "Counsel rendered inadequate, ineffective and meaningless assistance."
2. Prosecutorial misconduct; and
 - a. "Unethical practices."
3. Constitutional violations.
 - a. "Under provisions of South Carolina's Const. being held unconstitutional."

The State made its Return on or about December 19, 2008. An evidentiary hearing was convened on October 28, 2009, at which Applicant was present and represented by Charles T. Brooks, III, Esquire. The Honorable R. Ferrell Cothran, Jr. dismissed the application with prejudice in an order dated December 22, 2009, and filed December 14, 2009. No Notice of Appeal was filed.

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
 - a. "PCR counsel Charles T. Brooks was ineffective for failing to amend my PCR application of 2009."
 - b. "PCR counsel was ineffective for failing to amend to my PCR application of 2009 that applicant was denied the right to a direct appeal. See: Roe v. Flores Ortega, 120 S.Ct. 129 (2000). See also Rodriguez v. Padula. Such deprivation constituted a violation of the 6th and 14th Amendment of the U.S. Constitution."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539

(1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior post-conviction relief counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive post-conviction relief application under ' 17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Here, Applicant was afforded appellate review of his both his initial and subsequent post-conviction relief applications. Therefore, this Court finds this application should be summarily dismissed for failure to state a claim upon which relief can be granted.

This Court finds, further, that this application should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to - 160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;


5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Furthermore the relief sought by the Applicant in the application is not a cognizable relief claim for post-conviction relief under any of the statutory grounds. 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 for failure to state a claim.

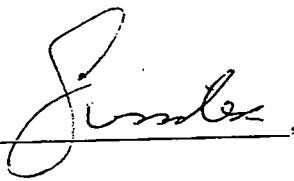
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Clarendon County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 17 day of April, 2013



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


_____, South Carolina

Joseph S. Brown, 325561
Lee Coll. Inst. Ric B 269
990 Wiscasset Highway
Bishopville, SC 29010

The Supreme Court of South
Carolina
PO Box 11330
Columbia, SC 29211

1/10