

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

HONORABLE R. LAWTON MCINTOSH

2011-CP-04-2061

MATTHEW T. PICKENS,

#151245

APPELLANT,

VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RECEIVED**

SEP 02 2014


S.C. SUPREME COURT

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**NOTICE OF APPEAL**

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Matthew T. Pickens appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Lawton McIntosh, Circuit Court Judge on September 18, 2013, and Final Order of Dismissal issued on July 22, 2014, and filed on August 27, 2014. The Appellant received Final Order of Dismissal on August 28, 2014.

  
\_\_\_\_\_  
Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
Anderson, South Carolina 29622  
(864) 226-5787  
Attorney for Matthew T. Pickens, #151245

Other Counsel of Record:  
Walt Whitmire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, South Carolina 29211

**RECEIVED**

*Hugh W. Welborn*

SEP 02 2014

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**S.C. SUPREME COURT**

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August 28, 2014

South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

In Re: Matthew T. Pickens, #151245 vs. State of South Carolina  
Case #: 2011-CP-04-2061

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Final Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: Office of the Appellate Defense  
Office of the Attorney General  
Client

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

HONORABLE R. LAWTON MCINTOSH

2011-CP-04-2061

MATTHEW T. PICKENS,  
#151245

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

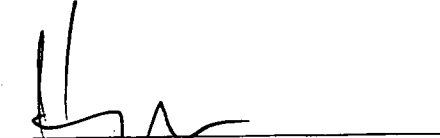
RESPONDENT.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on August 28, 2014, addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
Anderson, South Carolina 29622  
(864) 226-5787  
Attorney for Matthew T. Pickens, #151245

Anderson, South Carolina

28 August, 2014

ENTERED  
*[Signature]*

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF ANDERSON )

FOR THE TENTH JUDICIAL CIRCUIT )

Matthew T. Pickens, )  
S.C.D.C. No. 151245, )

C.A. No. 2011-CP-04-206 )

Applicant, )

v. )

**FINAL ORDER OF DISMISSAL** )

State of South Carolina, )

Respondent. )

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COMMON PLEAS AND  
GENERAL SESSIONS

This matter reaches the Court by way of an Application for Post-Conviction Relief (PCR) filed on November 9, 2010. The State filed its Return and Motion to Dismiss. A Conditional Order of Dismissal was issued on December 22, 2010. A hearing was convened on the matter at the Anderson County Courthouse on September 18, 2013. Applicant was represented by Hugh W. Welborn, Esq., and The State was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

**PROCEDURAL HISTORY**

Applicant pled guilty to burglary, first-degree, and criminal sexual conduct, first-degree, on September 1, 1988.<sup>1</sup> The Honorable Tom J. Ervin sentenced Applicant to a term of life imprisonment. Applicant was born on November 30, 1970.<sup>2</sup> The underlying offenses that led to his arrest, indictment, and conviction occurred on December 14, 1987.<sup>3</sup> Therefore, Applicant was seventeen years of age when he committed the offenses. Applicant entered his guilty plea one month short of his eighteenth birthday.

<sup>1</sup> See Sentencing sheets for Indictments (88-GS-04-471; -483).

<sup>2</sup> See S.C.D.C. Offender Management Records.

<sup>3</sup> See corresponding Indictments.

A TRUE COPY  
AUG 27 2014  
*[Signature]*  
CLERK OF COURT

Applicant pursued a direct appeal of his guilty plea. In 1990, the South Carolina Court of Appeals affirmed his sentence and conviction. Applicant filed his first timely Application for Post-Conviction Relief in 1991. An evidentiary hearing was convened and Judge Drew denied relief. By Order of parole issued on November 7, 2001, Applicant was released on parole on January 2, 2002. Applicant was indicted for failure to register as a sex offender (2005-GS-04-1735) among other charges. On July 13, 2005, Applicant pled guilty as indicted and was sentenced to ninety (90) days imprisonment. He was transferred to S.C.D.C. on January 10, 2006. A Final Revocation hearing was convened on March 29, 2006. Applicant was accused of the following parole violations: failure to notify agent of arrest for open container, and a seatbelt violation, association with a known criminal, being charged with seven (7) counts of obtaining goods under false pretenses and four (4) counts of issuing fraudulent checks that led to City Court convictions on the above mentioned. The Department of Applicant's parole was terminated in 2006 that revived the 1988 life sentence. Applicant filed his second Application for Post-Conviction Relief. Respondent's partial motion to dismiss was granted on Applicant's untimely and successive challenges to his 1988 conviction. A hearing was conveyed, regarding Applicant's recent convictions and sentences. Judge Macaulay denied relief in an Order dated August 26, 2006. Applicant appealed. The South Carolina Supreme Court denied Applicant's Petition for a Writ of Certiorari in 2008. Applicant's third and current Application for Post-Conviction Relief followed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing. Further, this Court reviewed the pleadings regarding this action, Clerk of Court's records regarding the subject convictions and prior PCR records, the Applicant's records from the South Carolina

Department of Corrections, the application for post-conviction relief, the transcripts from the prior proceedings, and legal arguments of counsel and memoranda of law from the attorneys. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

**A.**

This Court summarily dismisses Applicant's third successive and untimely PCR Application for reasons announced in the Conditional Order of Dismissal. This Court finds that Applicant's allegation that his sentence was in violation of the Eight Amendment was without merit where Applicant was parole eligible and in fact had obtained parole on his lifetime term of imprisonment. See Rummel v. Estelle, 445 U.S. 263, 280-81, 100 S.Ct. 133, 1142-43 (1980). Therefore this allegation is summarily denied and dismissed.

This Court finds that Applicant's allegation that sentencing judge lacked jurisdiction because Applicant was juvenile is similarly without merit. See S.C. Code Ann. § 63-19-1210. Therefore this allegation is summarily denied and dismissed.

This Court finds Applicant is procedurally barred from raising various new allegations of ineffective assistance of trial counsel in this successive PCR Application. See Land v. State, 274 S.C. 243, 245, 262 S.E.2d 735, 737 (1980) (citing S.C. Code Ann. § 17-27-110). Therefore these allegations are summarily denied and dismissed. This Court finds Applicant failed to present any compelling justification to warrant this Court's disregard of the procedural bar and review of new issues related to ineffective performance on the merits.

Last, Applicant's various allegations that his due process rights were violated by PCR counsel's performance is not cognizable in South Carolina State courts. See Kelly v. State, 404

S.C. 365, 745 S.E.2d 377 (2013). Therefore these allegations are summarily denied and dismissed.

**B.**

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

**CONCLUSION**

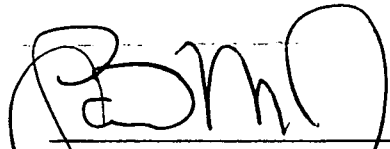
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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), SCRCR; Bray v. State, 336 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 South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED**

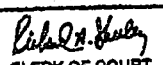
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 22 day of July, 2014.

  
R. LAWTON MCINTOSH  
Presiding Judge  
Tenth Judicial Circuit

Anderson, South Carolina

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August 28, 2014

Walt Whitmire  
Office of Attorney General  
State of South Carolina  
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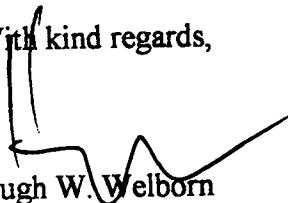
In Re: Matthew T. Pickens, #151245 vs. State of South Carolina  
Case #: 2011-CP-04-2061

Dear Walt:

Please find enclosed herewith a copy of the Appellant's Notice of Appeal and Proof of Service in connection with the foregoing matter. I also enclose copies of correspondence to the Appellate Defense Office and the Supreme Court. I have also forwarded copies of all documents to my client.

If you have any questions, please do not hesitate to contact my office.

With kind regards,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: Office of the Appellate Defense  
South Carolina Supreme Court  
Client

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August 28, 2014

South Carolina Office of Appellate Defense  
P. O. Box 11589  
Columbia, South Carolina 29211-1589

In Re: Matthew T. Pickens, #151245 vs. State of South Carolina  
Case #: 2011-CP-04-2061

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Final Order of Dismissal and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,

  
Hugh W. Welborn

HWW/sba  
Enclosures

cc: Court of Appeals  
Office of Attorney General  
Client

Hugh W. Welborn  
Attorney at Law  
P.O. Box 173  
Anderson, SC 29622



South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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