



Applicant's co-defendant was possibly induced to turn State's evidence and testify against Applicant in return for the possibility of leniency.

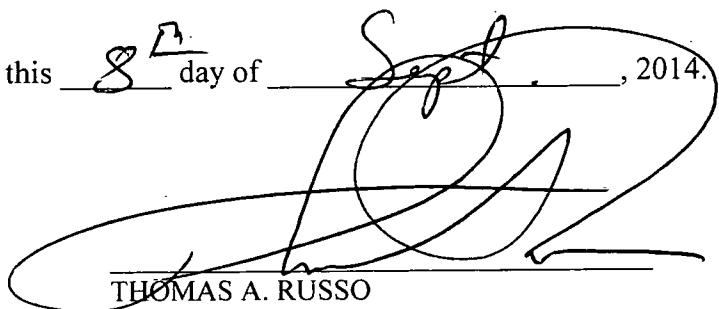
Applicant further directed correspondence to the State's prior undersigned counsel to confirm receipt of his response to the conditional order on March 10, 2014. Applicant directed correspondence to the prior undersigned counsel again on April 2, 2014, and next to the State's undersigned counsel on April 11, 2014. These documents have been attached to this Final Order and are herein referenced in this Court's ruling.

### CONCLUSIONS OF LAW

This Court finds Applicant has failed to establish a prima facie newly discovered evidence allegation to overcome the procedural bars regarding successive and untimely PCR actions. Applicant has failed to plead facts that asserted his original trial counsel was not in possession of Officer Turner's December 2006 incident report. This Court finds Applicant has pled facts concerning ineffective assistance of PCR counsel; not newly discovered evidence. This Court finds that the factual matter at issue was extensively litigated in his prior PCR action and is further procedurally barred by the doctrine of *res judicata*. Applicant's co-defendant and both prosecuting solicitors offered testimony. This Court is compelled to follow the South Carolina Supreme Court's controlling precedent in Kelly v. State that dictates that allegations of ineffective assistance of PCR counsel allegations are incognizable in subsequent PCR applications. See Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013). Simply, this Court notes that the scope and manner in which PCR counsel investigated and presented Applicant's 2010 PCR case not warrant an exception to the procedural bars concerning successive and untimely PCR applications.

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.

AND IT IS SO ORDERED this 8<sup>th</sup> day of Sept, 2014.



THOMAS A. RUSSO  
Circuit Court Judge  
Eleventh Judicial Circuit

Lexington, South Carolina.