

ORIGINAL <sup>(2)</sup> 11/11/14

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

FILED

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-1392

Quincy McCoy,  
S.C.D.C. No. 301045,

RETHA J. JAGG  
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LEXINGTON, SC

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OCT 15 2014

CONDITIONAL ORDER OF DISMISSAL  
S.C. Supreme Court

Applicant,

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 22, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted by the Lexington County Grand Jury for murder (2003-GS-32-3393), burglary, first-degree (2003-GS-32-1988), kidnapping (2003-GS-32-1987), attempted armed robbery (2003-GS-32-1983), criminal conspiracy (2003-GS-32-1984), and possession of a weapon during the commission of a violent crime (2003-GS-32-1985). He was represented by Stephen R. Soltis, Esquire. On October 20, 2003, Applicant pled guilty to the lesser-included offense of murder, manslaughter, and as indicted before the Honorable William P. Keesley. On April 6, 2003, was sentenced by the Honorable Marc H. Westbrook to a term of thirty years imprisonment for manslaughter, a term of twenty years imprisonment for attempted armed robbery, a term of five

years imprisonment for criminal conspiracy, and a term of five years imprisonment for the weapons offense. The sentences were to be served concurrently. Applicant did not appeal his sentence or conviction.

**2004-CP-32-3142**

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Applicant filed his first application for post-conviction relief on August 31, 2004. An evidentiary hearing into the matter was held June 27, 2006 at the Lexington County Courthouse. Applicant was present and was represented by Heath P. Taylor, Esquire. The Respondent was represented by Sabrina Todd, Esquire, of the Office of the Attorney General. Applicant alleged his confinement was unlawful for the following reasons:

1. Ineffective Assistance of Counsel
  - a. failure to investigate;
  - b. failure to advise Applicant of his defenses;
  - c. failure to advise Applicant to plead guilty
2. Involuntary Guilty Plea

In an order dated September 26, 2006, the Honorable Alexander S. Macaulay denied and dismissed this application with prejudice. Applicant filed a notice of appeal. On June 26, 2008 the South Carolina Supreme Court denied Applicant's Petition for a Writ of Certiorari. Applicant further filed a Petition for a Writ of Habeas Corpus in the United States District Court of South Carolina in November of 2008. On February 24, 2010 summary judgment was granted for the State.

**2011-CP-32-413**

Applicant filed his second application for post-conviction relief on February 2, 2011. Respondent filed a return and motion to dismiss. A motions hearing was held on August 13, 2011 at the Lexington County Courthouse. Applicant was present and was represented by Ari D.

Bax, Esquire. Respondent was represented by Kaelon May, Esquire, of the Office of the Attorney General. Applicant alleged his confinement was unlawful for the following reason:

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1. Newly Discovered Evidence:
  - a. "counsel failed to make Applicant aware of an applicable defense of duress just recently discovered by Applicant."
2. Ineffective Assistance of Counsel:
  - a. failure to investigate and negotiate a plea deal with the solicitor's office.
3. Involuntary Guilty Plea
  - a. failure to advise Applicant he could withdraw his guilty plea.

The Honorable W. Jeffrey Young granted the State's motion to dismiss Applicant's untimely and successive application for post-conviction relief in an order dated January 3, 2013.

**2013-CP-32-1392**

Applicant filed his third and current application for post-conviction relief on April 22, 2013. Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
  - a. "failure to investigate newly discovered evidence claim."
2. Time Reduction under amended section 15-25-65(b)(1)(4)
  - a. "saved an officer's life in aid of SCDC employee."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I.**

This Court 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 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. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant entered a guilty plea and was sentenced on April 6, 2003. Therefore, Applicant would have to file his application on or before April 7, 2004. This application was filed in 2013, almost nine years after the statute of limitations had run.

A motion for summary judgment 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) (1985) 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 judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

## II.

This Court summarily dismisses the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

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BENJAMIN R. JOHNSON  
COURT REPORTER  
LEXINGTON, SC

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegation in his previous post-conviction relief applications. Therefore, this Court summarily dismisses the application because it is successive.

### III.

This Court summarily dismisses this application for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. 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; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

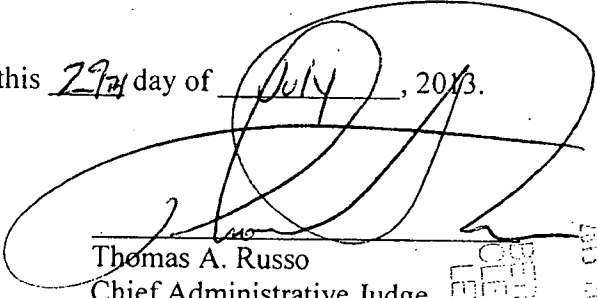
Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. First, this Court finds that a request for an amended sentence is not a cognizable claim. Second, this Court finds Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief, nor is it a sufficient reason to justify allowing an otherwise untimely and successive application. 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 PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394. The recent decision set forth by the United States Supreme Court in Martinez v. Ryan, No. 10-1001 (U.S. March 20, 2012), has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions. In fact, in the opinion as recited in the informal slip copy, the Court specifically notes

that their decision is not addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, stating “[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 he received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application. See also Kelly v. State (The Supreme Court of South Carolina, Appellate Case No. 2013-001079) (filed June 20, 2013). Accordingly, this Court summarily dismisses the allegation for a failure to state a claim entitling Applicant to relief.

### CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Lexington County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Walt Whitmire, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 29<sup>th</sup> day of July, 2013.

  
Thomas A. Russo  
Chief Administrative Judge  
Eleventh Judicial Circuit

LEXINGTON, South Carolina.

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ALAN WILSON  
ATTORNEY GENERAL

July 17, 2013

The Honorable Thomas A. Russo  
Chief Administrative Judge, Eleventh Circuit  
205 E. Main St.  
Lexington, SC 29072

Re: Quincy McCoy, # 301045 v. State of South Carolina  
2013-CP-32-1392

Dear Judge Russo:

Enclosed please find the proposed Conditional Order of Dismissal in the above reference case. If this order meets your approval, please sign it. You may then forward it to the Lexington County Clerk of Court to be filed and served on all parties.

Sincerely,

J. Walt Whitmire  
Assistant Attorney General

JWW/tb

cc: Quincy McCoy, # 301045  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899



**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2141	8/8/2013
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on n/a, and a copy mailed first class or placed in the appropriate attorney's box on 9th day of August 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Quiney McCoy #301045 McCormick Corr Inst 386  
Redemption Way McCormick, SC 29899

John Walter Whitmire PO Box 11549 Columbia, SC  
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.