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Attn: - Ms. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Lahborn Allah
Prisoner I.D. No.: 276542
M.C.I. F.2-196-A
386 Redemption Way
McCormick, SC 29844

Re: - ALLAH v. State, No. 2009 -
CP-40-04129 ;

- 'Final Order' inadvertently left out of 'Notice of Appeal' documents.

Dear Clerk of Court:

Please find enclosed a true & exact copy of the 'Final Order' which I was required to forward with my 'Notice of Appeal' documents on October 20, 2014, as required by SCACR 203 (d)(1)(B)(ii), yet was somehow inadvertently left out of such documents.

- I Thank You in Advance.

Sincerely,

/s/ LAHBORN ALLAH

LAHBORN ALLAH

Prisoner I.D. No.: 276542

McCormick, South Carolina

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NOV 07 2014

SC Court of Appeals

11 - 5 - 14
DATE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Lahborn Allah, #276542,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2009-CP-40-04129

FINAL ORDER OF

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SC Court of Appeals

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 9, 2009. Respondent made its Return and Motion to Dismiss September 27, 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 filed July 5, 2012, 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. Applicant filed another application for post-conviction relief on April 15, 2011, which was mistakenly merged with this case by order on May 16, 2014. This mistake was soon realized thereafter and this Court issued an Order Vacating the Order of Merger on June 13, 2014. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated July 24, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion for Dismiss be Denied," and filed on October 5, 2011, Applicant asserts: "Defendant – Brian T. Petrano states time bar when it's clear that time stops whenever Judges are looking over your case – so between then – dismissal of first PCR & Writ & Direct – it has only been 8 months." Applicant also filed a document captioned "Motion for

Appointment of Counsel,” on October 5, 2011, where he requests that an attorney be appointed to represent him in this PCR action.

On October 17, 2011, Applicant filed a document captioned “Amendment, and Supplementation to P.C.R. Application filed Pursuant to the S.C. Code Ann. § 17-27-10.” In this document Applicant raises many issues. Applicant alleges that he received ineffective assistance of counsel at his prior PCR proceedings in that counsel did not amend his application to include grounds he thought were meritorious. Applicant also alleges that counsel failed to call a witness in support of his case at the PCR hearing. Applicant also alleged that he received ineffective assistance of trial counsel and appellate counsel. Applicant alleges that the trial court lacked subject matter jurisdiction and did not have proper venue. Applicant argues that the indictments in his cases lacked specificity. Applicant makes a number of other allegations with numerous assertions throughout this filing which this Court has reviewed in their entirety.

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 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. This Court finds that Applicant has failed to state a claim upon which relief can be granted with regards to his allegation that his prior PCR counsel was ineffective.

This Court further finds that the doctrine of *res judicata* bars the Applicant's claims of ineffective assistance of trial and appellate counsel. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. Applicant has raised issues of ineffective assistance of trial and appellate counsel in his previous PCR application. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, this Court finds that these claims are barred by *res judicata*.

This Court also finds that Applicant's subject matter jurisdiction challenge is without merit. An applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction over Applicant's case and this allegation is without merit.

Applicant also alleges defects in his indictments. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). In post-conviction relief, an applicant wishing to challenge the sufficiency of the indictment must do so in the context of ineffective assistance of counsel. A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successive bars. See S.C. Code §§ 17-27-45, -90 (2003).

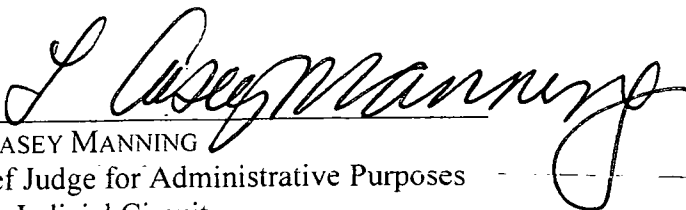
Accordingly, this Court finds the current application fails to state a claim which creates any genuine issue of material fact for this Court to consider.

This Court has reviewed Applicant's responses to the State's Conditional Order of Dismissal 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. This Court further finds that Applicant's current application is successive to Applicant's previously applications and that Applicant's current application was filed outside the statute of limitations.

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 advises 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. 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 8 day of Sept, 2014


L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit


South Carolina

LAHBORN ALAH
Prisoner I.D.No.: 276542
M.C.I. F.2-1961A
386 Redemption Way
McLormick, SC 29899

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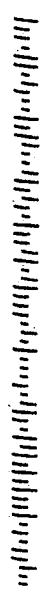
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SC Court of Appeals

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Clerk, S.C. Court of Appeals
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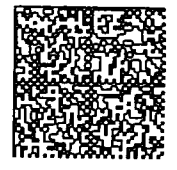


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