

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP4600929

Charles Johnson

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: J. Rutledge Johnson

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

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.**

*s/Lee S. Alford*

Circuit Court Judge

2113

Judge Code

9/12/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 2, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **October 2, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

**Charles Johnson** Evans Correctional Institute F3B-141 610  
Highway 9 West Bennettsville, SC 29512

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**James Rutledge Johnson** PO Box 11549 Columbia, SC  
29211

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

**David Hamilton**

**David Hamilton - Clerk of Court**

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**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.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Charles Johnson, #243842, )  
Applicant, )

2014-CP-46-0929

v. )

**CONDITIONAL ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

FILED-RECEIVED  
2014 OCT -2 PM 2:00  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief filed March 26, 2014. The State made its Return and Motion to Dismiss on

September 10, 2014

**PROCEDURAL HISTORY**

In its Return, the Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the June 1997 term of court for murder (97-GS-46-2061); failure to stop for a blue light resulting in death (97-GS-46-2062); assault with intent to kill (AWIK) (97-GS-46-2063); felony driving under the influence (DUI) resulting in great bodily injury (97-GS-46-2064); felony DUI resulting in death (97-GS-46-2065); and possession of a stolen vehicle (97-GS-46-2066). He was represented by Michael L. Brown, Esquire. On September 9, 1997, he pled guilty to all charges, except for murder, before the Honorable Joseph Watson. Judge Watson sentenced him to twenty-five years for felony

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DUI resulting in death; fifteen years, consecutive, for failure to stop for a blue light; ten years concurrent for AIK; fifteen years concurrent for felony DUI resulting in great bodily injury; and five years concurrent for possession of a stolen vehicle. Applicant did not appeal his conviction or sentence.

**1998-CP-46-0613**

On March 19, 1998, the Applicant filed his first application for PCR. The Respondent made its Return on or about September 23, 1998. An evidentiary hearing into the matter was convened on October 30, 1998, at the Moss Justice Center in York, SC. The Applicant was present at the hearing and was represented by Allen Bullard, Esquire. J. Benjamin Aplin, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. The Application alleged the following reason that he was being held in custody unlawfully:

1. Ineffective assistance of counsel;
2. Involuntary, unknowing and unintelligent plea;<sup>1</sup> and
3. Applicant's constitutional rights under 6, 8, 14th amends. were violated.

The Honorable John C. Hayes, III denied and dismissed the Applicant's PCR by written Order.

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<sup>1</sup> His specific ineffective assistance of counsel claims were that: (a) Counsel failed to conduct [a] reasonable evaluation and investigation into any plausible line of defense in this case, but instead forced Applicant to plead guilty based on Counsel's erroneous advice that absolutely no line of defense was available for the Applicant[, w]hen in fact, several legal strategies and defenses could and should have been employed by counsel;(b) Counsel erroneously advised Applicant to plead guilty;(c) Counsel failed to protect Applicant from [a] disproportionately harsh sentence and counsel's representation fell below reasonable standard[s] required by law. Counsel failed to advise [Applicant] of the law regarding the offenses for which he had been charged and failed to adequately consult with him about his case. Applicant received almost no visits from or communication with Counsel while waiting in jail for his trial despite the fact that he had paid Counsel \$ 8,000 dollars for his representation. Counsel refused to reply to the letters he wrote him inquiring about his case and refused his phone calls. And on rare occasions when Counsel visited Applicant, he offered absolutely no legal remedies for Applicant's case.

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Unfortunately, an appeal was not perfected on Applicant's behalf, although he desired an appeal. On February 4, 2000, Applicant filed a second PCR to ensure appellate review of the prior PCR denial (2000-CP-46-263). The only allegation in this Application was that:

INEFFECTIVE ASSISTANCE OF COUNSEL. ATTORNEY FAIL[ED] TO FILE APPLICANT[']S NOTICE OF APPEAL, TO THE STATE SUPREME COURT. (SEE ATTACHED LETTER FROM MR. ALLEN BULLARD, ATTORNEY-AT-LAW).

The State made a Return on June 27, 2000. The Honorable Lee S. Alford held an evidentiary hearing into this allegation on July 24, 2000, at the Moss Justice Center. Applicant was present at the hearing; and Terry B. Millar, Esquire, represented him. Assistant Attorney General Aplin represented the State. Mr. Bullard was the only witness at the hearing. Also, the State agreed at the hearing that a belated appeal from the first PCR denial was warranted. The Honorable Lee S. Alford entered an Order on August 18, 2000, granting Applicant a belated appeal of his PCR claims pursuant to Austin v. State. Applicant timely served and filed a notice of appeal. Chief Attorney Daniel T. Stacey, of the South Carolina Office of Appellate Defense represented him in collateral appellate proceedings. On August 3, 2001, Applicant filed a Petition for Writ of Certiorari Pursuant to Austin v. State. The South Carolina Supreme Court filed an Order on May 15, 2002, in which it (1) granted the petition for writ of certiorari from the Order granting a belated appeal, (2) dispensed with further briefing, (3) reviewed the Order of Dismissal from Applicant's first evidentiary hearing and (4) denied certiorari from the Order of Dismissal. It sent the Remittitur to the York County Clerk of Court on May 31, 2002.

**C/A No. 6:10-19-HFF-WMC**

Applicant then filed a Federal Habeas Corpus in the Federal District Court for the District of South Carolina on February 3, 2010. Applicant alleged the following issues in his Federal Habeas

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Corpus action:

- GROUND ONE:** Ineffective Assistance of Counsel.
- SUPPORTING FACTS:** No Order or Motion to hear all issues in order were filed.
- GROUND TWO:** Counsel was ineffective in failing to move for a Continuance.
- SUPPORTING FACTS:** The Defendant was in a Diminished Capacity due to injuries sustained in the said event.
- GROUND THREE:** The Court had no Subject Matter Jurisdiction to accept a plea or to pass sentence.
- SUPPORTING FACTS:** The Court should not have accepted or heard testimony or Pleas due to the Mental and Physical State of the Defendant.
- GROUND FOUR:** The Defendant was faced with Double Jeopardy.
- SUPPORTING FACTS:** Two of the Charges that were [run] consecutive were for the same Death. The defendant should not have been indicted for the same Death twice.

The Honorable Kevin F. McDonald issued a Report and Recommendation on September 21, 2010, recommending that the action be dismissed. On October 29, 2010, the Honorable Henry F. Floyd adopted the Report and Recommendation and granted the State's Motion for Summary Judgment, denying the Applicant's Habeas Corpus claim.

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

1. "Newly Discovered Evidence of SCDC's West Law Correction Web Cite."
  - a. "Evans [Correctional Institute] updated it's(sic) prison law library to include up to date cases. Easterwood v. Champion, 213 F.3d 1321"

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

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

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

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This Court also 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 judgement 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 was convicted of the offense(s) he challenges in this Application on September 9, 1997. Therefore, Applicant was required to file his application by September 10, 1998. This Application was filed on March 26, 2014, which was well after the statutory filing period had expired.

A motion for summary judgement 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) (2003) 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 judgement as a matter of law."

This Court further finds the Applicant cannot satisfy the requirements of the Lanier test for newly discovered evidence. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted;

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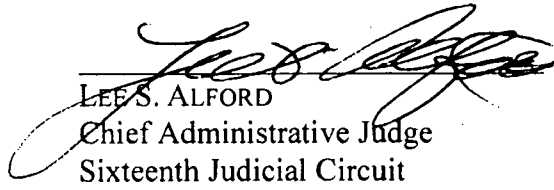
(2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. The Applicant has failed to prove that there is newly discovered evidence that would entitle him to a belated PCR action. Also, this Court finds the information provided by the Applicant would not change the outcome of the trial and was available in 2000 and could have been discovered with due diligence. Additionally, this Court finds that even if this information could fulfill the Lanier test, Applicant waited until over one year after he discovered this information to file this application and thus, he cannot satisfy the requirements of S.C. Code Ann. § 17-27-45(c). Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for being successive, for failure to file within the time mandated by statute, for failing to properly allege newly discovered evidence and for failing to timely file his newly discovered evidence claim.

Pursuant to S.C. Code Ann. § 17-27-70(b), the 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 York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

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AND IT IS SO ORDERED this 12<sup>th</sup> day of September, 2014.

  
LEE S. ALFORD  
Chief Administrative Judge  
Sixteenth Judicial Circuit

York, South Carolina

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**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated E. McRae (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA ) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF )

On this 22 day of October, 2014, I served the signed **Conditional Order of Dismissal** on Inmate **Charles Johnson No. 243842**, by delivering personally and leaving a copy of the same at **Evans Correctional Institution, Bennettsville, South Carolina**. Deponent is not a party to this action.

s/ E. McRae  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 22 day of October, 2014  
Joy Thomas (L.S.)  
Notary Public for South Carolina

My Commission Expires September 20, 2019

**ADMISSION OF SERVICE**

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, **Bennettsville Correctional Institution, Bennettsville, Marlboro** County, South Carolina, this 22 day of October, 2014.

s/ Charles Johnson  
Inmate Signature  
SCDC No. 243842