

The State Of South Carolina  
In The Supreme Court  
Appeal From Newberry County  
Court Of Common Pleas  
Frank R. Addy, Jr., Circuit Court Judge  
Case No. 2014-CP-36-0091

Ernest Perry, #281290,

Appellant,

v.

State Of South Carolina,

Respondent.

Notice Of Appeal

I, Ernest Perry, #281290, hereby appeals the Order of the Honorable Frank R. Addy, Jr. dated December 19, 2014. Appellant received written notice of entry of this Order on January 9, 2015.

February 2, 2015

Respectfully Submitted,  
Ernest Perry #281290  
Ernest Perry, #281290  
Kershaw C.I., Oak-B-45  
4848 Goldmine Highway  
Kershaw, S.C. 29067

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S.C. SUPREME COURT

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Certificate Of Service

I, Ernest Perry, #281290, do hereby certify that I have served copies of Notice Of Appeal in the above-captioned matter upon the below listed parties on the same date.

(1) Mr. James Rutledge Johnson, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

(2) Mr. Daniel E. Shearouse  
Clerk Of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Respectfully Submitted,  
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF NEWBERRY )  
 Ernest Perry, #281290, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT


2014-CP-36-0091

**FINAL ORDER OF DISMISSAL**

FILED  
 NEWBERRY COUNTY  
 2015 JAN 7 AM 11 18  
 JACKIE S. BOWERS  
 CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 21, 2014. The Respondent (the State) made its Return and Motion to Dismiss on September 4, 2014, 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 dated September 9, 2014, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 21, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Objection to the Conditional Order of Dismissal," the Applicant first argues he is entitled to a hearing because he filed a PCR/State Habeas Corpus action. He also alleges the Conditional Order mislabels his allegations. Moreover, Applicant alleges Martinez v. Ryan, 132 S.Ct. 1309 (2012) extends to this PCR action. Lastly, in his Amended Objection to the Conditional

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Order of Dismissal filed November 18, 2014, Applicant claims the State has never complied with an order from Judge Saunders to provide Applicant with alleged missing portions of his original Appendix.

This Court has reviewed the Applicant's response to the State's motion to dismiss 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.

First, although matter cognizable under Uniform Post-Conviction Procedure Act may not be raised by petition for writ of habeas corpus before circuit or other lower courts, Supreme Court retains ability, pursuant to State Constitution, to entertain writs of habeas corpus in its original jurisdiction and grant relief in those unusual instances where there has been violation which, in setting, constitutes denial of fundamental fairness shocking to universal sense of justice. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998). This Court finds Applicant is not entitled to a hearing in this case. This Court also finds an action for State Habeas Corpus must be filed in the original jurisdiction of the South Carolina Supreme Court and thus, this action is only construed as a PCR action.

Second, the Applicant alleges the Conditional Order of Dismissal mislabels his allegations. Applicant stated his allegations should be:

- A.) "Did the State's failure to prove key and essential elements of the substantive charge render Petitioner's conviction and sentence constitutional invalid?"
- B.) "Was Defense Counsel ineffective for not properly moving the Court to dismiss all charges against Petitioner and was PCR Counsel ineffective for not amending and arguing this issue at Post-Conviction Hearing?"

C.) "Why should this case be heard and ruled upon?"

This Court finds the first allegation (Issue A) raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court summarily dismisses this allegation.

Applicant's second allegation (Issue B) that Defense Counsel was ineffective had to have been raised during Applicant 2005 PCR application. 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). Applicant's contention that PCR counsel was ineffective is not properly before this Court. See Kelly v. State, 745 S.E.2d 377 (2013) (Martinez v. Ryan, 132 S.Ct. 1309 (2012) is limited to federal habeas corpus

review and is not applicable to state post-conviction reliefs actions). Therefore, Applicant's second allegation is denied.

This Court also finds Applicant's third allegation (Issue C) is merely a question of why his case should be heard and does not assert and other allegation. Therefore, this allegation is denied.

Third, as stated above, Martinez v. Ryan is not applicable in a state PCR action. This is reserved for federal habeas corpus actions. Thus, this allegation is denied.

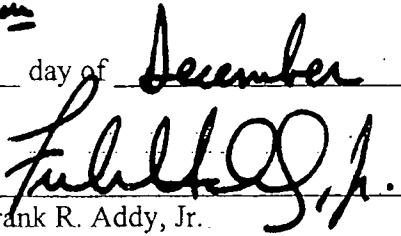
Fourth and Applicant's last allegation, Applicant claims the State has failed to comply with an order from Judge Saunders to provide Applicant with alleged missing portions of his original Appendix. This is not a PCR claim and thus not properly before this Court.

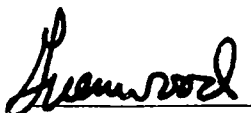
Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

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. The 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 19<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
Frank R. Addy, Jr.  
Chief Administrative Judge  
Eighth Judicial Circuit

 South Carolina.

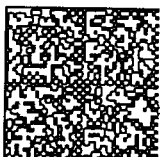
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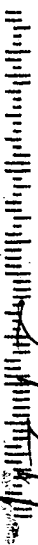
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Clerk Of Court  
Post Office Box 11330  
Columbia, South Carolina

E. Perry

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