

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF Common Pleas

Honorable Young Circuit Court Judge

Case No. 2013-CP-10-5276

Herbert Smalls #258624. Appellant

VS

State of South Carolina. Respondent

NOTICE OF APPEAL

The Appellant, Herbert Smalls 258624, takes this appeal from the case captioned above. The order in this case was entered on _____ 2015. Notice of entry of this order was received on _____ 2015.

Ashleigh R. Wilson
Assistant Attorney
General

s/ Herbert Smalls
Herbert Smalls 258624
306 Redemption Way
McCormick, S.C. 29899

THE STATE OF South CAROLINA
IN THE Supreme COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

RECEIVED

FEB 25 2015

S.C. SUPREME COURT

Honorable Young, Circuit Court Judge

CASE No. 2013-CP-10-5276

Herbert Smalls, 258624 Appellant

VS

State of South Carolina Respondent

CERTIFICATE OF SERVICE

The pro, se Appellant does hereby certify that he has served below listed parties below by mailing a copy of the Pleading(s) indicated in the united states mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below.

Parties served

Pleading

This 19 day Feb. of 2015

by J. Frankler

Herbert Smalls, 258624
286 Redemption way
McCormick, S.C. 29819

(1) Ashleigh R. Wilson
Office of S.C. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

(2) S.C. Supreme Court
Daniel E. Shearouse
P.O. Box 11330
Col, S.C. 29211

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Herbert Smalls, #258624,)

2013-CP-10-5276

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FINAL ORDER OF DISMISSAL

2015 JAN 22 AM 11:44
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 10, 2013. The Respondent (the State) made its Return and Motion to Dismiss on March 12, 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 March 17, 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. The Applicant was served a copy of the Conditional Order of Dismissal on April 25, 2014.

In a document captioned "Objection to Conditional Order of Dismissal" and dated March 25, 2014, the Applicant argues the following:

- Ineffective assistance of trial/appellate counsel.
- Counsel failed to advise him of right to post-conviction relief and did not offer to file his post-conviction relief application.
- Applicant was never notified by counsel that an appeal was perfected and dismissed by the Court.

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In a document captioned "Motion for Summary Judgment" and dated June 1, 2014, the Applicant argues the following:

- The Conditional Order of Dismissal fails to address claims in Applicant's amended application for post-conviction relief.

This Court has reviewed the Applicant's responses 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, this Court finds the Applicant's Motion for Summary Judge is denied. The Applicant has failed to show that there exists "no genuine issue as to any material fact" and that he is entitled to judgment as a matter of law. See SCRCP 56. This Court has reviewed the Applicant's amended application for post-conviction relief filed March 7, 2014. In his amended application, the Applicant alleges the following:

1. Ineffective assistance of counsel:
 - a. "Counsel's failure to advise applicant that upon the Court's acceptance of a guilty plea, applicant waives the right to attack his conviction on grounds of insufficient evidence; and all non-jurisdictional defects and defenses"
 - b. "Counsel's failure to "object" to the State's presentation of Indictment No. 2007-GS-10-3708"
 - c. "Counsel's failure to advise Applicant that upon his entered plea of guilty, he waives any and all potential double jeopardy claims for his plea to be valid"
 - d. "Counsel's failure to request a competence hearing prior to applicant's plea"
 - e. "Appellate counsel ineffective for failing to request trial transcripts and court documents in appellate procedures, but instead, chose to inform the appeal's court on appeal that: 'There is no issue under Rule 203(B)(IV), SCACR which counsel can identify as a basis for the appeal.'"

This Court finds the claims raised in the Applicant's amended application, like the claims raised in the Applicant's original application, were raised outside of the statute of limitations. None of the claims raised in this amended application justify the Applicant's filing of this application for post-conviction relief outside of the statute of limitations. This Court also finds the claims raised in the Applicant's Motion for Summary Judgment and amended application for post-conviction

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relief are not sufficient to preclude the issued Conditional Order of Dismissal from becoming final.

Second, this Court finds the Applicant's Objection to the Conditional Order of Dismissal also does not show sufficient reason why the Conditional Order of Dismissal should not become final. This Court finds plea counsel had no obligation to inform the Applicant of his right to post-conviction relief or to assist him with the filing of his post-conviction relief application. This Court finds the Applicant failed to exercise due diligence to comply with the statute of limitations for post-conviction relief matters. This Court finds the Applicant's lack of knowledge of the post-conviction relief process is not a justifiable excuse for the Applicant's evasion of the clear statute of limitations mandate outlined in S.C. Code 17-27-45. See Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2004) (holding ignorance of the statute of limitations for filing a petition for post-conviction relief (PCR) is not an excuse for late filing).

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

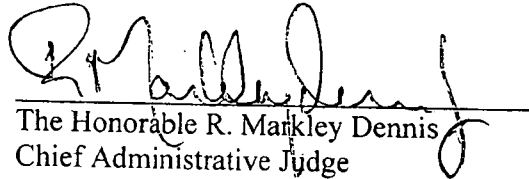
[Order continues on the following page.]

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IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and this Final 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 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 16th day of January, 2015.


The Honorable R. Markley Dennis
Chief Administrative Judge
9th Judicial Circuit

Moncks Corner, South Carolina.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF C.S.

DEPUTY CLERK

Herbert Smalls 258624
386 Redemption way
McCormick, S.C. 29899

Dated 2/19/15 2015

2013-CP-10-5276

Appellate Case No# _____

Dear Honorable Daniel E. Shearouse
of the South Carolina Supreme Court:

Enclosed Please find written explanation,
and ~~if~~ it meet your standard approval
Please sign and return to me a certify clocked
dated stamped copy:

Respectfully submitted
of Herbert Smalls

c:c: H: S: SCDC

c:c: H: D: E: S: S: C: C:

RECEIVED

FEB 25 2015

S.C. SUPREME COURT

Herbert Smalls, 258624
386 Redemption Way
McCormick, S.C. 29899

Legal mail

S.C. Supreme Court
Daniel E. Shearouse
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