

Ricky Brannon #179057
Perry Corr. INST.
430 Oaklawn Rd
Pelzer S.C. 29669.

To. The Honorable Daniel E. Shearouse
Clerk. South Carolina Supreme Court.

Re. Ricky Brannon #179057 U. STATE of South Carolina
c/A No. 2013-CP-11-0181.

In re. : Filing "Notice of Appeal"

RECEIVED
MAR 27 2015
SC SUPREME COURT

Dear Mr. Shearouse

Please find inclosed herein. The undersigned "Notice of Appeal" in reference to the dismissal of the above said case, and also a Certificate of Service on the Respondents, plus copies of The Order of Dismissals in referenced to the above said case.

Please Mr. Shearouse, could you acknowledge "receipt" of this said "Notice of Appeal", to the undersigned at his above referenced address, ~~That~~ Thank you for your cooperation.

Dated March 24, 2015

Respectfully
s/ Ricky Brannon
Ricky Brannon

Certificate of Service

Please Take Notice, That the undersigned do hereby Certify That he has served a True and Correct copy of the herein Attached "Notice of Appeal" of the dismissal of his PCR Application, CIA No. 2013-CP-11-0181 ON the Respondent, At Susan H. White, Assistant Attorney General, P.O. box 11549, Columbia S.C. 29211, By placing same in an envelope, properly addressed with U.S. postage pre-paid, sealed and deposited in the U.S. mail, at the Perry Corr. INST. mail room on this 24 day March 2015.

Respectfully

S/ Ricki Brannon
Ricki Brannon #179051
Perry Corr. INST.
430. Oaklawn Rd
Pelzer S.C. 29669

sworn before me this 24 day
of March 2015
Tamara Crowell
Notary Public for South Carolina

My Commission Expires
September 25, 2018
MY COMMISSION EXPIRES

STATE of South Carolina
IN The Supreme Court.

STATE of South Carolina
County of Cherokee.

Ricky Brannon #179051.

Appellant.

v.

STATE of South Carolina

Respondent.

C/A. NO. 2013-CP-11-0181

“Notice of Appeal.”

RECEIVED

MAR 27 2015

“NOTICE is Hereby Given.” as above captioned, this applicant appeals the order of Dismissal, entered in the above captioned, on November 24, 2014, by the Honorable J. Derham Cole, and received by the applicant on December 1, 2014.

SC SUPREME COURT

Attached are copies of the “orders” in referenced to the above captioned.

Dated March, 24, 2015

Respectfully

S/ Ricky Brannon
Ricky Brannon #179051
Perry Corr. INST.
430. Oaklawn Rd.
Pelzer S. C. 29669.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
)
Ricky Brannon, #179051,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

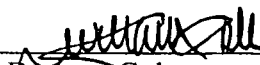
2013-CP-11-0181

ORDER

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion Pursuant to Rules 59(e) and 52(b), SCRCPP, to Alter or Amend And/Or Reconsider, For Good Cause Shown." The Respondent made its Return to this Motion on February 5, 2015.

The Order of Dismissal in this matter was signed by me on November 20, 2014. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal, which was signed and then filed November 20, 2014, shall stand as it was written.

AND IT IS SO ORDERED this 5 day of March, 2015.


J. Derham Cole
Seventh Judicial Circuit

Balfrey, South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAR 9 AM 10 13
BRANDY W. MOBEE

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP1100181

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 NOV 24 AM 10:19
BRANDY W. MCBEE

Ricky Brannon #179051 vs. State Of South Carolina

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: Final Order
- 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; Statement of Judgment by the Court:

Final Order

Dated at Gaffney, South Carolina, this the 24th day of November, 2014.

Court Reporter:

s/ J. Derham Cole

PRESIDING JUDGE - J. Derham Cole

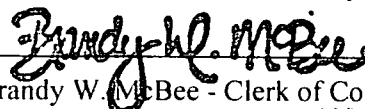
This judgment was entered on the the 24th day of November, 2014, and a copy mailed first class this the 24th day of November, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Ricky Brannon #179051 Perry Correctional
Institution 430 Oaklawn Rd Pelzer, SC 29669

Alan McCrory Wilson PO Box 11549 Columbia,
SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Ricky Brannon, #179051,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-11-0181

FINAL ORDER

BRANDY W. MOBEE

2014 NOV 24 AM 8 38

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 20, 2013, and amendment filed June 28, 2013. Respondent made its Return and Motion to Dismiss on or about December 4, 2013, 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 December 16, 2013, 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 a Certificate of Service dated December 19, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned, "Pro Se Applicant's 'Response' to the Conditional Order of Dismissal" and dated December 30, 2013, Applicant continues to argue that his application should be heard based on a claim of ineffective assistance of prior PCR counsel pursuant to Martinez v. Ryan, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012). Applicant states that the application is not successive or barred by the statute of limitations since he raises claims pursuant to Martinez. Applicant also argues that the Honorable Roger L. Couch should be recused from ruling on this post-

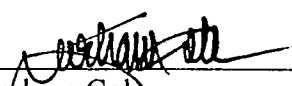
conviction relief matter because of his prior participation in Applicant's criminal and post-conviction relief matters. Applicant argues that the Conditional Order of Dismissal should be dismissed with prejudice because the Court did not draft its own proposed order and the validity of the proposed order should be questioned. Further, Applicant argues that the Respondent failed to properly file a return opposing the Applicant's current post-conviction relief application.

As previously discussed in the Conditional Order of Dismissal, the South Carolina Supreme Court has, along with other states, recognized that the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

This Court has reviewed the original and subsequent pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds that this application is successive and barred by 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.

AND IT IS SO ORDERED this 20 day of November, 2014.



J. Derham Cole
Seventh Judicial Circuit

_____, South Carolina.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 NOV 24 AM 8 38
BRANDY W. MCBEE

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP110018

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 DEC 19 PM 2 19
BRANDY W. MCBEE

Ricky Brannon #179051 vs. State Of South Carolina

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.
- 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; Statement of Judgment by the Court:

Conditional Order of Dismissal

Dated at Gaffney, South Carolina, this the 19th day of December, 2013.

Court Reporter:

s/ Roger L. Couch

PRESIDING JUDGE - Roger L. Couch

This judgment was entered on the the 16th day of December, 2013, and a copy mailed first class this the 19th day of December, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Ricky Brannon #179051 B.R.C.I-Mont 276 4460
Broad River Rd Columbia, SC 29210

Alan McCrory Wilson PO Box 11549 Columbia,
SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) SEVENTH JUDICIAL CIRCUIT

Ricky Brannon, #179051.

FILED IN OFFICE OF CLERK OF COURT
CHEROKEE COUNTY, S.C. 2013-CP-11-0181

Applicant,

2013 DEC 19 AM 10 58

v.

BRANDY W. MCBEE

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2013 DEC 15 PM 4:30

VOID CLOKED IN ERROR

This matter comes before this Court by way of an application for post-conviction relief filed March 20, 2013, and amendment filed June 28, 2013. Respondent made its Return and Motion to Dismiss on or about December 4, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Cherokee County Grand Jury indicted the Applicant at the February 2004 term of General Sessions for two counts of burglary, first degree (04-GS-11-0201, 04-GS-11-0202) and grand larceny (04-GS-11-0203). J. Roger Poole, Esquire, represented the Applicant. On April 13, 2006, the Applicant was convicted by a jury for one count of burglary, first degree (04-GS-11-0202) and of grand larceny. The Honorable Doyet A. Early, III sentenced the Applicant to confinement for life without parole (LWOP) for the burglary, first degree charge, and for five (5) years for the grand larceny charge, sentences running concurrently.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Brannon, Unpublished Op. No. 2008-UP-313 (S.C. Ct. App. filed June 20, 2008). The Remittitur was issued on

July 8, 2008.

2009-CP-11-0555

The Applicant subsequently filed an application for post-conviction relief (PCR) on June 10, 2009, and amendment submitted March 9, 2010. The State filed its Return on October 12, 2009. An evidentiary hearing was convened on April 6, 2010, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Rodney W. Richey, Esquire. The Applicant raised the following issues in his first PCR:

1. Prosecutorial and trial court misconduct and errors;
 - a. "Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment²."
 - b. "Trial court in its jury charge constructively amended the indictment by giving instructions of second degree burglary statute absent the required aggravating element when applicant was indicted on first degree burglary charges³."
 - c. "Fatal variance between indictment charging applicant with 1st degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial."
 - d. "Abuse of discretion of Trial Court. Failure to conduct 'gate keeping' obligation, proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."
 - e. "Abuse of discretion allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element."
 - f. "Failure to serve timely Notice seeking life without parole on Applicant."
 - g. "Error in trial court not inquiring into known conflict and potential conflicts of interest in applicants trial, improper jury instructions, failure to instruct jury on

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CHEROKEE COUNTY, S.C.
2013 DEC 19 AM 10 58
BRANDY W. MCBEE

1 The Applicant was sentenced to life without parole pursuant to §17-25-45.

2 The "aggravating element" to which the Applicant refers is his prior record, specifically "prior convictions or guilty pleas of two or more burglaries." (TT. p. 39; TT. p. 308-311).

3 During pre-trial motions the parties stipulated that evidence of the Applicant's prior convictions for burglary, first degree would be introduced into evidence in order to establish the aggravating element outside the presence of the jury to avoid prejudicing the Applicant, and the jury would be instructed "in such a manner that two prior convictions [would] not prejudice the Defendant." (TT. 39-40).

Bill
p 2

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CHEROKEE COUNTY, S.C.
2013 DEC 19 AM 10 58
BRANDY W. MCBEE
ADDED IN ERROR
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- lesser included offense, finding that prior guilty plea convictions were separate when crime was consolidated for sentencing constituting one conviction.”
2. Ineffective assistance of original trial counsel “in violation of applicants right to due process, conflict of interest...denial of counsel...”
 3. Ineffective assistance of substitute trial counsel “in violation of applicants right to due process, conflict of interest...denial of counsel...”
 4. Ineffective assistance of appellate counsel for “frivolous appeal, prejudice late notice of final decision of issue on appeal.”
 5. Due Process Violations; and
 - a. “Conflict of interest in the 7th Circuit Solicitor’s Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal.”
 6. Newly discovered evidence.
 - a. “Perjury testimony, 6th amendment violation, discovery violation, 4th amendment violation and violation of due process (involuntary statement).”
 7. Ineffective assistance of counsel
 - a. Numbers 1-31 as listed in his amendment.

The Honorable J. Derham Cole denied and dismissed Applicant’s application by written Order on November 15, 2010.

The Applicant appealed the denial of his PCR application and a Johnson Petition for Writ of Certiorari was filed on Applicant’s behalf. The Supreme Court of South Carolina dismissed the Petition and the Remittitur was returned on June 4, 2013.

Applicant’s Current PCR Application

In his current application, amendment, and supporting documents for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel, in that;
 - a. PCR Counsel failed to timely amend Applicant’s additional grounds of original trial counsel and substitute trial counsel as well as appellate counsel’s ineffective representation. Counsel improperly filed

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 DEC 19 AM 10 58

BRANDY W. MCBEE

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- the amended grounds after Applicant's PCR hearing was held, but failed to file any motions to get those amended allegations heard by the court.
- b. PCR Counsel failed to seek all avenues to obtain relevant discovery documents requested by Applicant and needed to support claims of ineffective assistance of counsel, even after the court allowed the record to remain open.
- c. PCR Counsel failed to review the Order dismissing the application and timely file a 59(e) motion, when the Order clearly reflects several inaccuracies and the court failed to rule upon all issues presented.
- d. PCR Counsel improperly waived the attendance of Applicant's former appellate counsel, Lanelle C. Durant, attending the PCR hearing and informed her he would submit interrogatories, but failed to do so.
- e. PCR Counsel failed to move to stay the Order when Applicant had timely moved with a Motion to Dismiss PCR Counsel prior to the PCR court's ruling and the court failed to hear the motion.
- f. PCR Counsel failed to move for summary judgment on Applicant's claim of ineffective assistance of original trial counsel when Respondents failed to produce and call original counsel to the hearing.

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

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 a 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, although Applicant asserts the current allegations could not have been raised in a prior application because of the recent United States Supreme Court's recent decision in Martinez v. Ryan — U.S. —, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), these allegations are not proper for post-conviction relief. This Court also finds, as indicated in the recent Supreme Court of South Carolina decision of Kelly v. State, that the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013). Thus the current application is successive and barred under S.C. Code § 17-27-90.

Statute of Limitations

This Court further 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 (2003). 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). The Applicant was convicted of the offense(s) he challenges in this Application on April 13, 2006. The

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BRANDY W. MBBEE

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Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on July 8, 2008. The Applicant was therefore required to file his application before July 8, 2009. This Application was filed on March 20, 2013, which was well after the statutory filing period had expired.

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) (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 judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and because it is successive to his previous application.

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VOID CLERK OF COURT ERROR

Summary


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 Cherokee County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211




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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 DEC 19 AM 10 58
BRANDY W. MCBEE

AND IT IS SO ORDERED this 16th day of December, 2013.



Roger L. Couch
Administrative Judge – Common Pleas
Seventh Judicial Circuit


_____, South Carolina

RECORDED IN ERROR
DEC 16 PM 4:30

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 DEC 19 AM 10 58
BRANDY W. MCBEE

Ricky Brennan #179051,
Perry Carr. INST. Q2, 14-209
430 Oaklawn Rd.
Pelzer S.C. 29669.

RECEIVED
MAR 24 2015
P.C.I. MAILROOM

The Honorable, David E. Shearouse, Clerk,
South Carolina Supreme Court
Post office box 11330,
Columbia S.C. 29211,