

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
John C. Hayes, Circuit Court Judge

RECEIVED

MAR 31 2015

S.C. Supreme Court

RICHARD KEITH POE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO: 2014-CP-46-2656

PETITION FOR WRIT OF CERTIORARI

RICHARD KEITH POE, # 259297 PRO-SE

Catawba Pre-Release Center
1030, Milling Road
Rock Hill, SC 29730



ISSUE'S PRESENTED

Was Circuit Court Judge Baxley ineffective for failing address issues put before him during PCR hearing on January, 22-2014 specifically arrest warrant alleging Burglary First, and the indictment that was True Billed under statute §16-3-311 Burglary First.

Was Judge Baxley ineffective for failing to address grounds that was in PCR application, specifically counsel Sean F. Cronin failing to file appeal on behalf of petitioner when requested he do so by petitioner following his conviction June, 4th-2013. in York County Sixteenth Circuit.

Furthermore, failed to comply with the Court of Appeal's request for necessary documents.

Was Judge John C. Hayes ineffective in his ruling denying PCR application, and (he) being the sentencing Judge.

Petitioner was indicted by the York County Grand Jury for the offenses of " Burglary First ", petit larceny, and criminal conspiracy. Petitioner's case was called to trial on June, 4th-2013 before the Honorable Judge John C. Hayes III. Sean Francis Cronin represented petitioner.

Was counsel Hemplepp ineffective for failing to object to the Judge Baxley's failure to address the issues that was put before him, and failing himself to address the issue of Sean F. Cronin failing to file appeal on behalf of petitioner.

Furthermore, failing to amend PCR application.

ARGUMENT

According to Marlar v. State, 373, S.C, 275, 644, S.E, 2nd 769, S.C, app 2007, Court order was inadequate and should be remanded for specific finding of facts, PCR court shall make specific findings of facts and state expressly its conclusions of law, relating to each issue presented, S.C Code Ann, §17-27-80 (2003).

Garner v. State, 371, S.C, 1.1, 636, S.E 2nd 860, (2006) emphasizing language in §17-27-80 that specific findings of facts and, conclusion of law regarding each issue presented "must be made by the PCR court".

In Pruitt v. State, 423, S.E, 2nd, 127-Supreme Court held that order denying post conviction relief improperly failed to address allegations raised in application for post conviction relief.

Remand for rehearing was necessary where order denying request for post conviction relief failed to address petitioners claims that he was denied his right to direct appeal.

McGray v. State, 408 S.E, 2nd, 241 S.C, (1991) Remand was required on appeal from denial of post conviction relief, where post conviction court dismissed movants ineffective assistance of counsel allegations without making finding of facts on specific allegations raised violating statute and precluding appellate review altogether.

PCR, courts have been repeatedly admonished regarding the failure to specifically rule on the issues presented in a PCR application Bryson v. State, 328, S.C, 236, 236-37, 493 S.E 2nd 500 (1997).

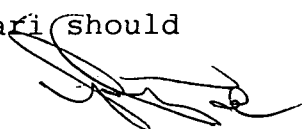
However, failing to address the merits of issues which have been fairly raised in PCR actions does nothing to alleviate these problems, but rather exacerbates them.

CONCLUSION

Petitioner, was sentenced to (13) years, and was denied his right to an direct appeal no fault of his own, but counsels fault failing to file appeal, and refusing to submit the documents as requested by the Court of Appeal he do so.

Petitioner filed PCR where Judge Baxley denied and Petitioner appealed and this Court denied writ.
Petitioner filed second PCR where, Judge Lee Alford denied State motion to dismiss, stating this order does not end this case, awaiting on Attorney General Office in response.
Petitioner has filed third which was is stated herein, and the Judge John C. Hayes has denied.

Based on the foregoing argument, a writ of certiorari should be granted to allow full briefing on this matter.



The South Carolina Court of Appeals

The State, Respondent,

v.

Richard Keith Poe, Appellant.

Appellate Case No. 2013-001239


ORDER

On June 5, 2013, the appellant filed a pro se notice of appeal with the Supreme Court. The Supreme Court transferred the appeal to the Court of Appeals for disposition. On November 6, 2013, this Court sent a deficiency letter to attorney Sean Francis Cronin, requesting a redacted copy of the sentencing sheet and a proof of service showing the notice of appeal was timely filed. Mr. Cronin never responded to the letter from the Court. We made several more attempts to get the necessary documents from Mr. Cronin by calling him on April 11, 2014, and on May 8, 2014. Mr. Cronin promised to send the necessary documents to the Court. To date, we have not received any further correspondence from Mr. Cronin.

Accordingly, this appeal is dismissed for failure to show timely service of the notice of appeal in compliance with Rule 203(b)(2) of the South Carolina Appellate Court Rules (SCACR) and failure to file a copy of the order challenged on appeal as required by Rule 203(d)(1)(B)(ii), SCACR. Remittitur will be sent according to Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 27, 2014

Mr. Sean Francis Cronin, Esquire
PO Box 1025
Rock Hill SC 29731

Re: The State v. Richard Keith Poe
Appellate Case No. 2013-001239

Dear Counsel:

This office is in receipt of your "Motion for Correction of the Record". Please be advised that the Remittitur was issued in this case on June 26, 2014. The issuance of this Remittitur ended the case and the Court of Appeals no longer has jurisdiction. Therefore, no action will be taken on your motion.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Richard Keith Poe, 00259297
Robert Michael Dudek, Esquire
Salley W. Elliott, Esquire

Shawn Cronin - Cross by Mr. Hemlepp

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1 Q Did you request a preliminary hearing on any of these
2 charges?

3 A No.

4 Q And would that strategic decision? Was it a timing
5 decision? Why is that?

6 A It may have you been a timing decision.

7 Q Okay.

8 A I don't recall off the top of my head here today.

9 Q You remember that you did not request a preliminary
10 hearing, but you really can't testify why?

11 A Correct.

12 Q Okay. The -- the research that you had done with
13 regards to the elements of the burglary. The warrant says
14 burglary first. There is no language in the body of the warrant
15 that indicates that the building was anything other than a
16 storage building. There is no language about appurtenant or
17 curtilage or connection, did that strike you?

18 A Yes. I researched it and there was I found law that
19 stated that as far as the definition goes it could be a building
20 where goods are stored.

21 Q All right. Okay.

22 A Which seemed to fit the definition to me.

23 Q Okay. Of a building for the purposes of burglary
24 first.

25 Are you familiar with direct indictment?

1 A Yes.

2 Q What is a direct indictment?

3 A It's when they indict him without presenting it to the
4 Grand Jury.

5 Q Okay. Okay. When they present the case to the Grand
6 Jury without an underlying warrant and in a direct indictment
7 some times there is an arraignment?

8 A Correct.

9 Q Had you ever done that prior to this hearing?

10 A No.

11 Q I want to talk to you about the offers in the case.
12 You testified the first offer was 12?

13 A Twelve violent.

14 Q Yes, and is it the practice in the York County
15 Solicitor's Office that usually the Discovery comes with an
16 offer.

17 A Uh-huh.

18 Q It's not negotiated, it's just their initial offer.

19 Had you and Miss Shelton discussed that offer or was that just
20 presented to you?

21 A I am not sure, but if memory serves me it was via an
22 e-mail as part of turning over the Discovery. There were more
23 materials she wanted to get me. The offer is X, Y, Z. That is
24 my recollection.

25 Q Was it a formal document or was it just an e-mail?

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4602424

Richard Keith Poe

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

CONDITIONAL ORDER OF DISMISSAL

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.**

David Hamilton

2099

10/14/2014

Clerk of Court

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 14, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **October 14, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Richard Keith Poe ECI 610 Hwy 9 West Bennettsville, SC
29512

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

Richard Keith Poe, #259297,)

2014-CP-46-2424)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FILED - RECEIVED
2014 OCT 14 PM 2:28
DAVID HAMILTON
C.C.C.P. & B.S.
YORK COUNTY, SC

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed July 28, 2014. The Respondent made its return and motion to dismiss on

September 26, 2014.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2012 term of the York County Grand Jury for Burglary, 1st degree (2012-GS-46-3771), Petit Larceny (2012-CP-46-3769) and Criminal Conspiracy (2012-CP-46-3772). The Applicant was represented by Sean Cronin, Esquire. On June 4, 2013, the Applicant pled guilty to Burglary, 2nd degree as a lesser included offense, and Petit Larceny and Criminal Conspiracy as indicted. The Honorable John C. Hayes, III sentenced the Applicant, pursuant to recommendations from the State, to confinement for thirteen (13) years for Burglary, 2nd degree, ten (10) years, concurrent, for Petit Larceny and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction or sentence.

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[Handwritten signature]

2013-CP-46-2033

The Applicant filed his first application for post-conviction relief on July 3, 2013. The Applicant raised the following issues in his first application:

1. "Ineffective Assistance of Counsel"
2. "Prejudice by 16th Circuit Solicitor also by Judge Hayes and Judge Alford"

Respondent made its Return on September 10, 2013. An evidentiary hearing was convened on January 22, 2014. The Applicant was represented by W. Michael Hemlepp, Jr., Esquire. The Honorable J. Michael Baxley, denied and dismissed the Applicant's application with prejudice by Order dated March 6, 2014.

A timely Notice of Appeal was filed and an appeal was perfected. This appeal is currently pending.

In his current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Insufficient Indictment"
 - a. "Lacked jurisdiction to accept plea"
3. "Prejudice by Judges"
 - a. "insufficient indictment/re-indictment"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because the doctrine of *res judicata* bars the Applicant's claims. *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.

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App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in his 2013 PCR action. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismisses these claims as barred by *res judicata*.

This Court also 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. The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. To the extent Applicant claims he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C.

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110, 208 S.E.2d 35 (1974), he must have raised this issue in his first application. See Graham v. State, Order No. 2008-05-07-01 (filed May 7, 2008). The 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).

This Court additionally 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). The Applicant was convicted of the offense(s) he challenges in this Application on June 4, 2013. Therefore, the Applicant was required to file his application by June 5, 2014. This Application was filed on July 28, 2014, 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) (1985) 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

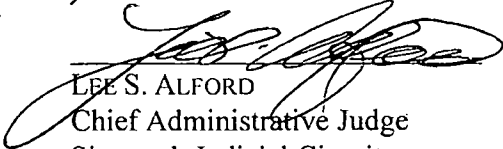
law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute, for being successive and for being barred by *res judicata*.

CONCLUSION

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:

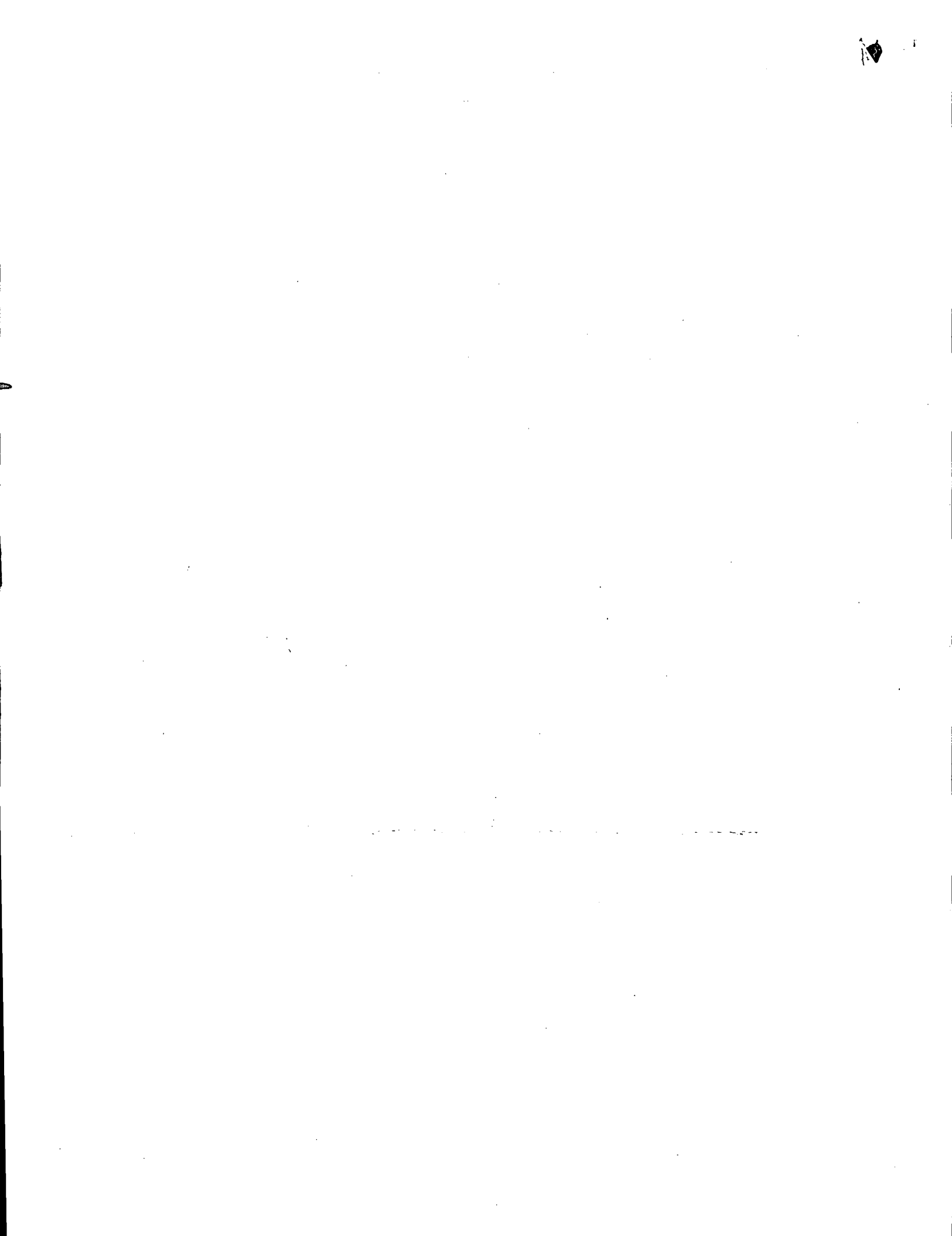
Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 29th day of September, 2014


LEE S. ALFORD
Chief Administrative Judge
Sixteenth Judicial Circuit

 , South Carolina

#5
2014



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
John C. Hayes, III, Circuit Court Judge

RICHARD KEITH POE
Petitioner

v.

STATE OF SOUTH CAROLINA
Respondent

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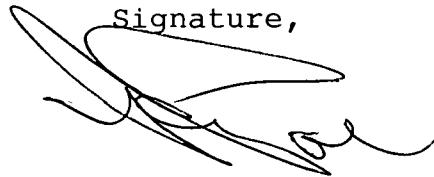
S.C. Supreme Court

APPELLATE NUMBER: 2014-CP-46-2656

Certificate of Service

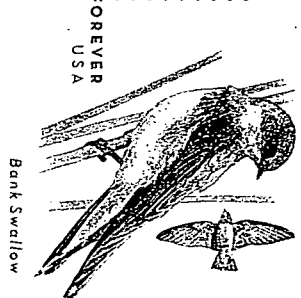
I certify that a true copy of the petition for writ of certiorari has been served upon J. Rutledge Johnson, and the Clerk of Supreme Court Daniel Shearouse for filing. March, 18-2015.

Signature,

A handwritten signature in black ink, appearing to be "J. Rutledge Johnson", written over a horizontal line.

Richard K. Poe, 259297
Catawba Pre-Release
1030, Milling Rd
Rock Hill SC, 29730

Clerk of Court
Mr, Shearouse
PO, BOX11330
Columbia SC, 29211



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