

# The Supreme Court of South Carolina

Herbert Smalls, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000461

Lower Court Case No. 2013CP1005276

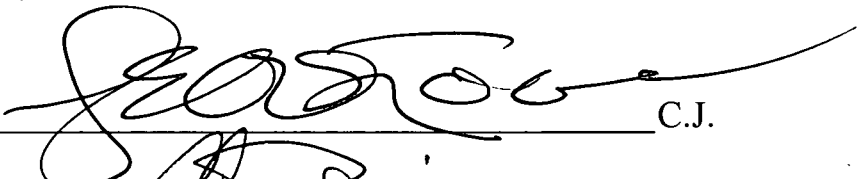
---

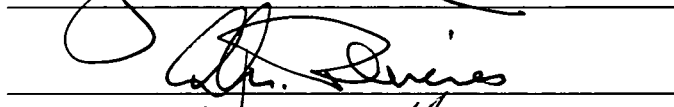
## ORDER

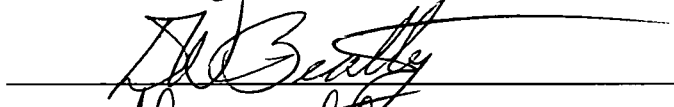
---

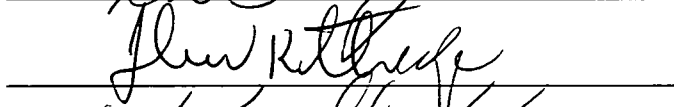
This matter is before the Court by way of a notice of appeal from an order of the Honorable R. Markley Dennis dismissing petitioner's application for post-conviction relief based on S.C. Code Ann. § 17-27-45(A) (2013). Petitioner has submitted the explanation required by Rule 243(c), SCACR. We hereby dismiss the notice of appeal without prejudice and remand this matter to Judge Dennis to conduct a hearing pursuant to *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) to determine whether petitioner's mental incapacity prevented petitioner from filing the application for post-conviction relief in a timely manner.

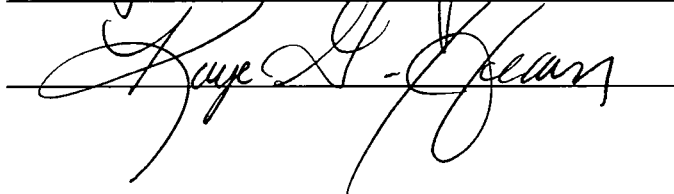


  
C.J.

  
J.

  
J.

  
J.

  
J.

Columbia, South Carolina  
April 28, 2015

cc: Ashleigh Rayanna Wilson, Esquire  
Mr. Herbert Smalls, #258624  
The Honorable R. Markley Dennis, Jr.  
The Honorable Julie J. Armstrong