

THE STATE OF SOUTH CAROLINA
SUPREME COURT

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MAY 19 2015

SC SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Steven H. John, Jr., Circuit Court Judge

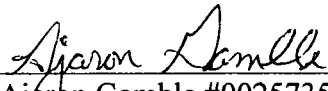
Case No. 2014-CP-22-715

Ajaron Gamble #00257354.Appellant,
v.
The StateRespondent

NOTICE OF APPEAL

Daniel E Sharouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29211

May 12, 2015


Ajaron Gamble #00257354
Kershaw Correctional Inst.
4848 Goldmine Hwy.
Kershaw, S. C. 29067
Pro Se

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SC SUPREME COURT

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Ajaron Gamble #257354Appellant,

v.

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PROOF OF SERVICE

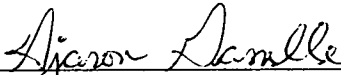
I certify that I have served the Notice of Appeal to the following recipients by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2015, addressed to:

Daniel Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29211

Office of Appellant Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

Attorney General's Office
Joshua Thomas, Esq.
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

May 12, 2015


Ajaron Gamble #00257354
Kershaw Correctional Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Ajaron Gamble, #257354,)

Case No. 2014-CP-22-715

Applicant,)

RECEIVED
FINAL ORDER OF DISMISSAL
MAY 19 2015

v.)

State of South Carolina,)

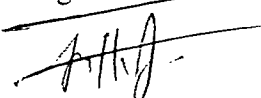
SC SUPREME COURT

Respondent.)

FILED
GEORGETOWN COUNTY, S.C.
2015 APR 24 PM 12:48
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed July 23, 2014. Respondent made a timely Return and Motion to Dismiss on or about December 15, 2014, requesting the Application be summarily dismissed for failing to state a claim upon which relief can be granted. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Honorable Larry B. Hyman issued a Conditional Order of Dismissal, filed on January 16, 2015, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated February 12, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed a response to the conditional order on March 10, 2015. In that response, Applicant asserts the notice of appeal filed by his prior collateral counsel was insufficient because it “did not contain sufficient facts arguments and citations to legal authority to show there is an arguable basis for assertion that the determination by the lower court was improper as required. In counsel’s explanation counsel merely cited Rule 243(c) of the S.C. Appellate Court Rules in addition to Appellant relying upon the one-year discovery rule.” Applicant asserts his

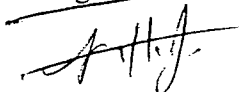


appeal from his prior post-conviction relief action was dismissed because counsel failed to comply with the filing requirements of Rule 243(c), SCACR.¹

The Court finds Applicant has not demonstrated his application states a claim upon which relief can be granted. Applicant essentially asserts prior collateral counsel was ineffective because the South Carolina Supreme Court did not agree with the arguments counsel made in his 243(c), SCACR, explanation. This is not a claim of ineffective assistance of counsel, but rather a claim of appellate court error. The appropriate venue to challenge the Supreme Court's decision to dismiss his appeal lies in the Supreme Court, not in the Circuit Court. Therefore, he has not asked this Court for relief it has the power to grant.

Furthermore, Applicant cannot attempt to couch this argument as a claim of ineffective assistance of counsel because ineffective assistance of prior collateral counsel is not grounds for post-conviction relief. Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (recognizing that "the constitutional right to counsel does not extend to discretionary appeals on collateral attack"); see also Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (no constitutional right to effective assistance of collateral counsel); Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (ineffective assistance of collateral counsel not grounds for successive application). The only exception to this rule is an allegation prior collateral counsel failed to seek appellate review of the prior post-conviction relief action. Austin, 305 S.C. at 454, 409 S.E.2d at 396. However, a subsequent collateral action on this ground can only be sustained where "(1) the applicant requested and was denied an opportunity to seek appellate review; or (2)

¹ "If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed."

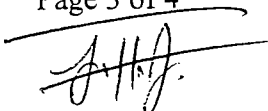


the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). Here, prior collateral counsel filed a notice of appeal and an explanation pursuant to Rule 243(c). Therefore, he cannot allege he was denied appellate review or that he did not waive appellate review. The allegation prior collateral counsel’s Rule 243(c) explanation was deficient is not a ground upon which this Court can grant Applicant relief because Applicant has received the appellate review envisioned by Austin. See Aice, 305 S.C. at 452, 409 S.E.2d at 395(“Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance[.]”). Accordingly, the Court finds Applicant has not demonstrated “[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State” or “otherwise subject to collateral attack[.]” S.C. Code Ann. § 17-27-20(a)(6). The Court further finds Applicant has not shown a sufficient reason why the conditional order should not become final.

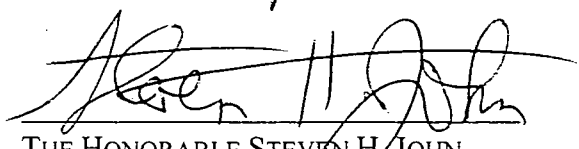
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant’s counsel to file and serve notice of appeal. The Applicant’s attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

[signature page follows]

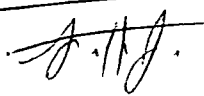
A handwritten signature in black ink, appearing to be 'A.H.J.', written over a horizontal line.

IT IS SO ORDERED THIS 8th DAY OF April, 2015.



THE HONORABLE STEVEN H. JOHN
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

At County, South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
)
)
AJARON GAMBLE, #257354)
 vs)
)
STATE OF SOUTH CAROLINA,)
)
 Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2014-CP-22-715

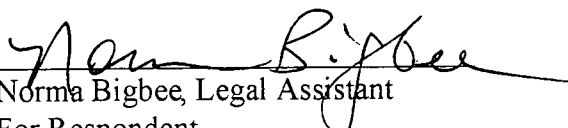
AFFIDAVIT OF SERVICE BY MAIL

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MAY 19 2015
SC SUPREME COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Final Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ajaron Gamble, #257354
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Kershaw, SC 29067

DATED this 5th day of May, 2015.


Norma Bigbee, Legal Assistant
For Respondent

Ajaron Gamble #00257354
Kershaw Correctional Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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MAY 19 2015

SO SUPREME COURT

May 12, 2015

Daniel Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, S.C. 29211

Re: Notice Of Appeal & SCACR 243(c) Explanation
Case No. 2015-CP-22-715

Enclosed is an original copy of the Notice of Appeal and an Explanation as required by SCACR 243 (c), and Proof of Service, in the above referenced case. An extra copy of the originals along with prepaid postage is enclosed as well for a return clock stamped filings. Should there be a need for anything else to be filed I ask that you contact me at the above address immediately.

Thank you Kindly

Sincerely,



Alison Danell #257354
Kendall Construction / 881-35
4848 Delmonico Hwy
Meriden, S.C. 29066

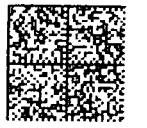
to: Daniel E. Shannon
Supreme Court Building
1231 Delmonico Street
Columbia, S.C. 29211

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MAY 15 2015

Kendall
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