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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

GENERAL COUNSEL

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated EuroBrook (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA ) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF Kershaw )

On this 12 day of February, 2015, I served the signed Conditional Order of Dismissal on Inmate Ajaron Gamble No. 257354, by delivering personally and leaving a copy of the same at Kershaw Correctional Institution, Kershaw, South Carolina. Deponent is not a party to this action.

s/ EuroBrook  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 12<sup>th</sup> day of February, 2015  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires 12/5/2024

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Kershaw Correctional Institution,  
Lancaster County, South Carolina, this 12 day of February, 2015.

s/ A. Amleh  
Inmate Signature  
SCDC No. 257354

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Ajaron Gamble, #257354, )  
Applicant, )

Case No. 2014-CP-22-715

v. )

**CONDITIONAL ORDER  
OF DISMISSAL**

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 23, 2014. The Court finds as follows:

**I. PROCEDURAL HISTORY**

**A. Underlying Conviction**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. In October 1998, the Georgetown County Grand Jury indicted Applicant for armed robbery (1998-GS-22-810) and possession of a weapon during commission of a violent crime (1998-GS-22-814). Raymond C. Fisher, Esquire, represented Applicant. In March of 1999, Applicant was tried before the Honorable Paula H. Thomas and a jury. The jury found Applicant guilty of both offenses. Judge Thomas sentenced him to thirty (30) years for armed robbery and five (5) years for possession of a weapon during commission of violent crime.

A notice of appeal was timely filed, and Ann Pearce, Esquire, perfected the appeal with the filing of an Anders<sup>1</sup> brief. The South Carolina Court of Appeals affirmed the convictions on November 29, 2000. State v. Gamble, 2000-UP-727 (Ct. App. filed Nov. 29, 2000).

<sup>1</sup> Anders v. California, 386 U.S. 738 (1967).

FILED  
GEORGETOWN COUNTY, S.C.  
2015 JAN 16 PM 1:09  
ALMA Y. WHITE  
CLERK OF COURT

**B. First Post-Conviction Relief Action (2001-CP-22-761)**

Applicant filed his first application for post-conviction relief on October 19, 2001. The Honorable B. Hicks Harwell convened an evidentiary hearing on the application in July 2004. Applicant was represented by Toni T. Pennington, Esquire. Judge Harwell denied relief by order filed September 9, 2004. Applicant did not appeal Judge Harwell's order.

**C. Second Post-Conviction Relief Action (2004-CP-22-920)**

On November 10, 2004, the Applicant filed a second Application for post-conviction relief alleging he was entitled to an appeal pursuant to Austin v. State<sup>2</sup>. An order granting the Austin appeal was filed on November 22, 2004.

Applicant filed a timely notice of appeal, and Aileen P. Clare, Esquire, perfected the appeal with the filing of a petition for writ of certiorari. On December 6, 2006, the Supreme Court granted review of Judge Harwell's denial of relief and ordered briefing on one issue. However, on November 5, 2007, the Supreme Court dismissed the writ of certiorari as improvidently granted. The remittitur was returned to the circuit court on November 21, 2007

**D. Third Post-Conviction Relief Action (2011-CP-22-1174)**

Applicant filed a third application for post-conviction relief on September 14, 2011. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "After discovered evidence (January 24, 2011)
  - a. "A juror who was seated at trial did not disclose a longstanding relationship with the alleged victim in the case."

On December 6, 2011, Applicant filed a "Supplement to Application for Post-Conviction Relief and Incorporated Memorandum of Law" alleging a juror intentionally concealed his relationship with the victim.

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<sup>2</sup> 305 S.C. 453, 409 S.E.2d 395 (1991).

The Honorable J. Cordell Maddox Jr. convened an evidentiary hearing into the matter on August 29, 2013, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Matthew S. Swilley, Esquire. Judge Maddox denied and dismissed the application by order dated January 30, 2014, and filed February 21, 2014.

Bobby G. Frederick, Esquire, filed a timely notice of appeal on Applicant's behalf. On March 24, 2014, Mr. Frederick provided the Supreme Court with the explanation required by Rule 243(c), SCACR.<sup>3</sup> On May 7, 2014, the Supreme Court dismissed the appeal for failing to demonstrate "an arguable basis for asserting that the determination by the lower court was improper." The remittitur was returned to the circuit court on May 23, 2014.

## **II. CURRENT APPLICATION**

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of PCR Counsel"
  - a. "Failure to perfect appellate review pursuant to SCACR 243(c)"

Applicant requests the Court "issue a Consent Order Granting Belated PCR Appeal pursuant to Austin v. State; SCACR 243(c)." In an attachment to his application, Applicant alleges Mr. Frederick's explanation pursuant to Rule 243(c), SCACR, was deficient.

Respondent made a timely Return and Motion to Dismiss on December 15, 2014, asking this Court to dismiss the application for failing to state a claim upon which relief can be granted.

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<sup>3</sup> "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."

### **III. FINDINGS OF FACT AND CONCLUSION OF LAW**

S.C. Code Ann. § 17-27-70(c) 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.” The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

#### **A. Failure to State a Claim**

The Court finds this application should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based on the following grounds:

- “(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....”

S.C. Code Ann. § 17-27-20(a). Applicant alleges prior collateral counsel was deficient in articulating his position in the Rule 243(c), SCACR, explanation. However, ineffective assistance of prior collateral counsel is not grounds for post-conviction relief. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”); see also Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (declining to hold “that prisoners have a constitutional right to counsel when mounting collateral attacks

upon their convictions”). 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 (1991). 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) 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). Thus, an allegation collateral counsel failed to properly articulate the applicant’s position on appeal to the Supreme Court is not the type of claim envisioned in Austin. Austin, 305 S.C. at 454, 409 S.E.2d at 396 (recognizing that “the constitutional right to counsel does not extend to discretionary appeals on collateral attack”); see also Aice, 305 S.C. at 452, 409 S.E.2d at 395 (“Austin is limited to its particular factual situation”).

Here, Applicant has not shown he was denied appellate review or that he did not waive appellate review. Instead, the record demonstrates Mr. Frederick filed a notice of appeal and an explanation as required by Rule 243(c), SCACR. The Supreme Court reviewed Applicant’s appeal and found no arguable error in Judge Maddox’s ruling. Thus, Applicant has received the review envisioned by Austin. Aice, 305 S.C. at 452, 409 S.E.2d at 395 (“Austin never received a full “bite” at the apple, as he was prevented from seeking *any* review of the denial of his PCR application.” (emphasis added)). Austin only provides for a single appellate review of an application, not an opportunity to second guess the performance of collateral counsel who perfected the initial review. See id. (“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[.]”).

Because the post-conviction relief rules only provide for a single procedural adjudication on an application, 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). Therefore, the Court finds summary dismissal is appropriate.

IV. CONCLUSION


The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Georgetown County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Joshua L. Thomas, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the <sup>Georgetown JLT</sup> ~~Horry~~ County Clerk of Court within twenty (20) days, and his failure to timely file and serve this response will result in the Court not considering his response.

IT IS SO ORDERED THIS 17 DAY OF Dec, 2014.

  
THE HONORABLE LARRY B. HYMAN, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

Cowan, South Carolina