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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF 01 2015
COMMON PLEAS S.C. SUPREME COURT

MICHAEL B. LESANE # 258515

NOTICE OF
APPEAL

VS.

STATE OF SOUTH CAROLINA
RESPONDENTS

C/A: 2014-CP-22-64

NOTICE IS HEREBY GIVEN THAT I, MICHAEL B. LESANE, PLAINTIFF IN THE ABOVE NAMED CASE, HEREBY APPEAL TO THE SC SUPREME COURT FROM THE FINAL ORDER ENTERED IN THIS ACTION ON THE 18TH DAY OF MAY 2015.

THE ORDER WAS SERVED ON PLAINTIFF ON JUNE 5, 2015.

JUNE 27, 2015

Respectfully Submitted,
Michael Lesane

Proof of SERVICE

I, Michael LESANE # 258515, hereby says, UNDER the PENALTY of PERJURY, that a copy of this MOTION WAS SERVED ON the COURTS by way of WATEREE CORR. INST. MAIL ROOM SERVICE, hand delivered to mailbox on this 27 day of JUNE 2015.

JUNE 27 2015

RESPECTfully Submitted,
Michael Lesane
MICHAEL LESANE # 258515

STATE OF SOUTH CAROLINA)
COUNTY OF Georgetown)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael B. Lesane, #258515,)
Applicant,)

Case No. 2014-CP-22-64

v.)
State of South Carolina,)
Respondent.)

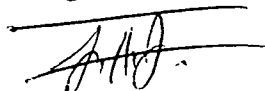
FINAL ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2015 JUN - 1 PM 12: 58
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed January 27, 2014. Respondent made a timely Return and Motion to Dismiss on or about March 24, 2015, requesting the Application be summarily dismissed as successive and untimely. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Court issued a Conditional Order of Dismissal, filed on March 31, 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 April 9, 2015, of the above-mentioned conditional order on Applicant.

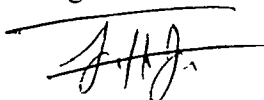
Applicant filed a document captioned "Response to Conditional Order of Dismissal" on April 9, 2015. In that response, Applicant argues his appeal from his second post-conviction relief application did not address any issues of ineffective assistance of counsel raised in his first application. Therefore, he argues, he was denied the right to appeal his first application, and is entitled to an appeal of his first application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

The Court has reviewed the original pleadings and all relevant documents, including the records from Applicant's prior post-conviction relief applications and appeals. In his second



application, Applicant alleged he did not waive his right to appeal the denial of his first application. The circuit court and Supreme Court agreed that Applicant was entitled to an appeal from his first application. On appeal, Applicant argued the first post-conviction relief judge erred in not finding trial counsel ineffective in failing to file an appeal from the conviction. The Supreme Court again agreed with Applicant, and granted him an appeal from his conviction. However, upon review of the direct appeal issue, the Supreme Court affirmed Applicant's conviction. Thus, the record demonstrates the appeal from Applicant's second application did in fact address issues raised in his first application. Accordingly, he has received the review of his first application envisioned by Austin, and is not entitled to a successive application to further challenge the first post-conviction relief judge's ruling. See Aice v. State 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) ("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[.]").

To the extent Applicant alleges collateral appellate counsel was ineffective in failing to argue the first post-conviction relief judge erred in other respects, such an argument is not a cognizable collateral claim because there is no constitutional right to collateral counsel. 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, 305 S.C. at 451, 409 S.E.2d at 394 (ineffective assistance of collateral counsel not grounds for successive application). This Court will not second-guess the decision of counsel in the appeal from the second application to only brief a single issue raised in the first application. Aice, 305 S.C. at 450, 409 S.E.2d at 394 ("We will not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not.").

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

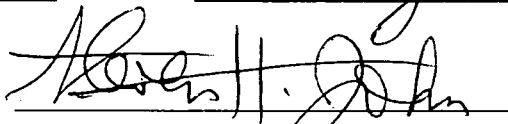
Finally, this is Applicant's fourth post-conviction relief application. Any allegations regarding issues on appeal from his second application could have been raised in his third application. Accordingly, these allegations cannot be raised at this juncture. Bray v. State, 366 S.C. 137, 141, 620 S.E.2d 743, 745 (2005) ("Although petitioner did not raise an allegation that he was denied the right to review his first PCR application in his second PCR action, he could have raised this allegation. Therefore, petitioner's third PCR application should have been dismissed as impermissibly successive.").

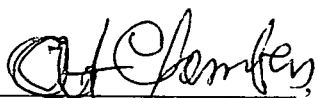
For the foregoing reasons, the Court finds Applicant has not shown a sufficient reason why the application was not successive and untimely such that conditional order should not become final.

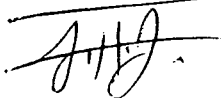
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

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), SCRCRCP, 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.

IT IS SO ORDERED THIS 18th DAY OF May, 2015.

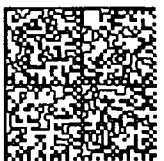

THE HONORABLE STEVEN H. JOHN
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

, South Carolina



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