

[The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, S.C. 29211]

RECEIVED

JUL 20 2015

RE: State of South Carolina, Respondent,  
v. Nathaniel Johnson, Jr. #211574, Appellant,  
Case No. 2013- CP-07-1650

S.C. SUPREME COURT

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case.  
Also enclosed are the following:

- (1). Proof of service of the notice of appeal on the Respondent.
- (2). A copy of the order[s][judgment] which is [are] to be challenged on appeal.
- (3). A filing fee of \$100.00.\*
- (4). This appeal is being filed with the Supreme Court because the lower Court determined that the post conviction relief action is barred as successive or being untimely under the statute of limitations, the written explanation required by Rule # 227(c) SCAR.

Sincerely,  
/s/ *Nathaniel Johnson, Jr. #211574*  
Nathaniel Johnson, Jr. #211574  
LCI. Stono-B#50  
P.O. Box 205  
Ridgeville, S.C. 29472  
Pro-Se Appellant

THE STATE OF SOUTH CAROLINA  
[In The Supreme Court]

RECEIVED

JUL 20 2015

APPEAL FROM THE BEAUFORT COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Carmen T. Mullen, Chief Administrative Judge

Case No. 2013-CP-07- 650

State of South Carolina, ..... Respondent,

v.

Nathaniel Johnson, Jr. #211574, ..... Appellant,

NOTICE OF APPEAL

Nathaniel Johnson, Jr. #211574, appeals the order [judgment] of the Honorable Carmen T. Mullen, dated July 14<sup>th</sup> 2015. Appellant received written notice of entry of this order [judgment] on June 17<sup>th</sup> 2015.

July 14<sup>th</sup> 2015

/s/ Nathaniel Johnson, Jr. #211574  
Nathaniel Johnson, Jr.  
SCDC# 211574 LCI.SB-50  
P.O. Box 205  
Ridgeville, S.C. 29472.  
Pro-Se Appellant

Other Counsel of Record:  
J. Ruthledge Johnson  
Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211-1549

THE STATE OF SOUTH CAROLINA  
[In The Supreme Court]

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APPEAL FROM THE BEAUFORT COUNTY  
Court of Common Pleas

JUL 20 2015

Carmen T. Mullen, Chief Administrative Judge

S.C. SUPREME COURT

Case No. 2013-CP-07-1650

State of South Carolina, ..... Respondent,

v.

Nathaniel Johnson, Jr. #211574, ..... Appellant,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, by depositing a copy of it in the U.S. mail, postage prepaid, on July 14<sup>th</sup> 2015, addressed to the Assistant Deputy Attorney General J. Ruthledge Johnson, P.O. Box 11549, Columbia, S.C. 29211-1549, and a copy sent to the Honorable Jerri Ann Roseneau, Clerk of Court, P.O. Drawer 1128, Beaufort, S.C. 29901, on July 14<sup>th</sup> 2015.

July 14<sup>th</sup> 2015.

1s/ Nathaniel Johnson, Jr. #211574  
Nathaniel Johnson, Jr.  
SCDC# 211574 LCI.SB-~~50~~  
P.O. Box 205  
Ridgeville, S.C. 29472.  
Pro-Se Appellant

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Nathaniel Johnson, )  
S.C.D.C. No. 211574, )

2013-CP-07-1650

Applicant, )

v. )

**CONDITIONAL ORDER OF  
DISMISSAL**

State of South Carolina, )

Respondent. )

2015 JAN 13 PM 4:47

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Nathaniel Johnson (Applicant) on June 25, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted during the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct in the first degree (2006-GS-07-1641), burglary in the first degree (2006-GS-07-1642), and possession of a firearm during the commission of a violent crime (2006-GS-07-1643). Applicant proceeded to trial, and a jury found him guilty of kidnapping and criminal sexual conduct in the first degree and not guilty of burglary in the first degree and possession of a firearm during the commission of a violent crime. Stephanie Smart-Gittings, Esquire, represented Applicant. On March 14, 2007, the Honorable Howard P. King sentenced Applicant to concurrent terms of imprisonment of thirty years for kidnapping and thirty years for

criminal sexual conduct in the first degree. Applicant appealed, and the South Carolina Court of Appeals affirmed his convictions. *State v. Johnson*, Op. No. 2008-UP-690 (S.C. Ct. App. filed Dec. 11, 2008). The remittitur was issued on December 30, 2008.

**First PCR Application: 2009-CP-07-1050**

Applicant filed his first PCR application on March 9, 2009, alleging the following grounds for relief:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

Respondent filed its return on July 14, 2009. Timothy M. Wogan, Esquire, represented Applicant. An evidentiary hearing was held at the Beaufort County Courthouse on August 30, 2011. By order filed October 17, 2011, the Honorable D. Craig Brown denied and dismissed the application with prejudice.

**First Federal Habeas Corpus Petition: 1:13-1794**

Applicant filed a pro se federal petition for a writ of habeas corpus on June 21, 2013, alleging the following grounds for relief:

1. False imprisonment, insufficient evidence to convict.
2. Improper chain of custody with DNA evidence and blood sample.
3. Actual prejudice of all court appointed attorneys. Failure to properly raise issues, contemporaneously object or preserve issue for review.
4. Prosecutorial misconduct, violations of Fourth, Fifth, Sixth, and Fourteenth Amendments. Lack of evidence to convict.

Respondent filed its return and motion for summary judgment on December 20, 2013. The Honorable Shiva H. Hodges, United States Magistrate Judge, issued a report on April 22,

2014, recommending Respondent's motion for summary judgment be granted. The Honorable Richard M. Gergel, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice on May 12, 2014.

II.

Applicant filed his current application on June 25, 2013, alleging the following grounds for relief:

1. Insufficient evidence to convict.
  - a. Matter of material facts, improper chain of custody.
2. Elements of the crimes.
  - a. Not guilty as charged, false imprisonment.
3. Ineffective assistance of counsel.
  - a. Actual prejudice with no contemporaneous objections for issues to be preserved for review.

Before this Court are the Beaufort County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, appellate records, and Applicant's previous and current PCR records.

III.

This Court finds this current PCR application must be summarily dismissed because it is successive to his previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the 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.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing that he could not have previously raised the allegations. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in his previous application. This Court must summarily dismiss Applicant’s current application because it is successive to his previous application.

#### IV.

This Court also finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment 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 held the one-year 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).

Applicant was convicted of the offenses he challenges on March 14, 2007. The remittitur from his appeal was issued on December 30, 2008. Therefore, Applicant was required to file his PCR application on or before December 30, 2009. Applicant filed this application on June 25, 2013, **more than three years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period ends. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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 this application must be summarily dismissed for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.


V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this 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 days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Beaufort County Clerk of Court and shall serve opposing counsel at the following address:

(Conclusion and signature on the following page)

Office of the Attorney General  
Elizabeth H. Neyle, Esquire  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 12 day of Jan, 2014

  
\_\_\_\_\_  
CARMEN T. MULLEN  
Chief Judge for Administrative Purposes  
Fourteenth Judicial Circuit

Braufort  
Reaper, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

June 12, 2015

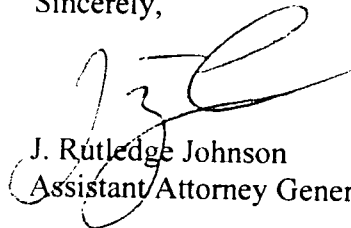
The Honorable Carmen T. Mullen  
Chief Administrative Judge, Fourteenth Judicial Circuit  
PO Drawer 1128  
Beaufort, SC 29901

**Re: Nathaniel Johnson #211574 v. State of South Carolina**  
**2013-CP-07-1650**

Dear Judge Mullen:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Beaufort County Clerk of Court to be filed and served.

Sincerely,

  
J. Rutledge Johnson  
Assistant Attorney General

JRJ/em  
Enclosure(s)

cc: Nathaniel Johnson, #211574

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Nathaniel Johnson, #211574 )

2013-CP-07-1650

Applicant, )

v. )

**FINAL ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 25, 2013. The Respondent (the State) made its Return and Motion to Dismiss on December 29, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed January 13, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant made a timely response filed January 14, 2015.

In a document titled "Motion for Evidentiary Hearing in Response to Proposed Conditional Order of Dismissal," the Applicant argues his application is neither untimely nor successive Martinez v. Ryan, 132 S.Ct. 1309 (2012) allows him a full opportunity to exhaust all claims in a state PCR action. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

11

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394. Further, Kelly v. State explicitly states, "that the holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Therefore, the Applicant's contention that prior PCR counsel was ineffective is not properly before this Court.

As to the claim that Applicant's trial counsel was ineffective, 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. 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 also finds Applicant has shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). 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 judgment 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 held the one-year 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 South Carolina Court of Appeals affirmed Applicant's conviction on December 11, 2008. The Remittitur was issued on December 30, 2008. Therefore, Applicant was required to file his PCR application on or before December 31, 2009. Applicant filed this application on June 25, 2013, well after the statutory filing period expired.

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

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17 day of June, 2015



Carmen T. Mullen  
Chief Administrative Judge  
Fourteenth Judicial Circuit

Beaufort, South Carolina.



Received Jan 5<sup>th</sup>, 2014

ALAN WILSON  
ATTORNEY GENERAL

December 30, 2014

The Honorable Carmen T. Mullen  
102 Ribaut Road  
PO Drawer 1128  
Beaufort, SC 29901

Re: Nathaniel Johnson, #211574 v. State of South Carolina  
2013-CP-07-1650

Dear Judge Mullen:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. If this Order meets with your approval, please sign same and forward to the Beaufort County Clerk of Court to be filed and served.

Sincerely,

Elizabeth H. Neyle  
Staff Attorney, PCR Division

EHN/arh

Enclosure(s)

cc: Nathaniel Johnson #211574,

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
)  
)  
)  
)  
Nathaniel Johnson, )  
S.C.D.C. No. 211574, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

2013-CP-07-1650

**CONDITIONAL ORDER OF  
DISMISSAL**

2013 JUN 13 PM 4:47


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Office of the Attorney General  
Elizabeth H. Neyle, Esquire  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 12 day of Jan, 2014



CARMEN T. MULLEN  
Chief Judge for Administrative Purposes  
Fourteenth Judicial Circuit

Braunfort  
Beaufort, South Carolina

Mr. Nathaniel Johnson Jr. #211594  
LCJ Steno B#50  
P.O. Box 205  
Ridgeville, S.C. 29472

THE Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211