

September 21, 2015

The Honorable Daniel E. Shearouse  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

**RECEIVED**

SEP 24 2015

Re: Terrence L. Cox v. The State  
Case No.: 2014-CP-26-2301

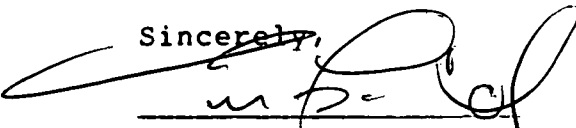
S.C. SUPREME COURT

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal and an Explanation as required by the rules.

Thank you for your prompt attention and assistance in this matter.

Sincerely,



Terrence L. Cox #232219  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, SC 29472

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THE STATE OF SOUTH CAROLINA

SEP 24 2015

In the Supreme Court

APPEAL FROM HORRY COUNTY

S.C. SUPREME COURT

Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Case No.: 2014-CP-26-2301

Terrence L. Cox . . . . .Appellant

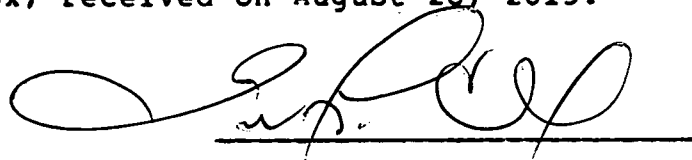
S.C.D.C. #232219

V.

The State . . . . .Respondent

**NOTICE OF APPEAL**

Terrence L. Cox appeals his denial for post-conviction relief in this case. The order of dismissal was signed by the Honorable William H. Seals, Jr., August 9, 2015, filed August 20, 2015, which I, Terrence L. Cox, received on August 28, 2015.



**Other Counsel on Record:**

Joshua L. Thomas, Esq.  
Asst. Attorney General  
P.O. BOX 11549  
Columbia, SC 29211-1549

Terrence L. Cox #232219  
Lieber Correctional Inst.  
P.O. BOX 205  
Ridgeville, SC 29472

Appellant, Pro Se

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SEP 24 2015

**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA**

**In the Supreme Court**

**APPEAL FROM Horry COUNTY**

**Court of Common Pleas**

**The Honorable William H. Seals, Jr., Circuit Court Judge**

**Case No.: 2014-CP-26-2301**

Terrence L. Cox . . . . . **Appellant**

S.C.D.C #232219

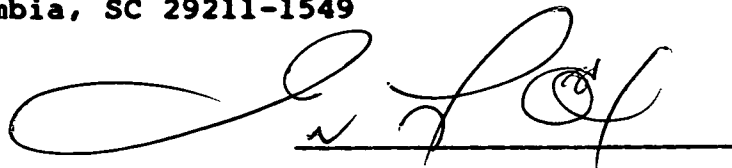
**V.**

The State . . . . . **Respondent**

**CERTIFICATE OF SERVICE**

I, Terrence L. Cox, do hereby certify that on this 21st day of September, 2015, I served the foregoing Notice of Appeal upon counsel of record in this matter by depositing a copy of the same in the U.S. mail, pre-paid postage, addressed to the following:

**Joshua L. Thomas, Esq.  
Attorney General's Office  
P.O. BOX 11549  
Columbia, SC 29211-1549**



**Terrence L. Cox #232219  
Lieber Corr. Inst.  
P.O. BOX 205  
Ridgeville, SC 29472**

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL CIRCUIT )

**Copy**  
15 AUG 20 PM 1:27  
MELANIE HUGGINS-WARD  
CLERK OF COURT  
HORRY COUNTY

Terrance L. Cox, #232219, )

Case No. 2014-CP-26-2301 )

Applicant, )

**FINAL ORDER OF DISMISSAL**

v. )

State of South Carolina, )

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

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed April 14, 2014. Respondent made a timely Return and Motion to Dismiss on or about May 19, 2015, requesting the Application be summarily dismissed as successive and untimely. Pursuant to this motion, the Honorable Steven H. John reviewed the pleadings in this matter and all of the records attached thereto. Judge John issued a Conditional Order of Dismissal, filed on June 1, 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 June 25, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed an amended application on June 25, 2015. In that filing, he alleges "lack of jurisdiction" as a ground for relief. Applicant filed a response to the conditional order on July 15, 2015. In that filing, Applicant alleges he was mentally incompetent at his prior post-conviction relief hearing. The Court is not persuaded these filings entitle Applicant to proceed on with successive and untimely post-conviction relief action. The issues raised in Applicant's initial application all involved legal issues and were not so fact intensive as to require Applicant's competence to proceed. See Council v. Catoe, 359 S.C. 120, 129, 597 S.E.2d 782,


787 (2004). Furthermore, he has presented no evidence of his mental incompetence. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.” (citations omitted)). Finally, Applicant’s allegation the trial court lacked subject matter jurisdiction is meritless. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

The Court has reviewed the original pleadings, Applicant’s filings, and all relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not successive and untimely such that 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. Applicant’s attention is directed to Rules 203 and 243, SCACR, for appropriate procedures for appeal.

IT IS SO ORDERED THIS 9 DAY OF August, 2015.

  
THE HONORABLE WILLIAM H. SEALS JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TERRANCE L. COX, #232219

vs

STATE OF SOUTH CAROLINA,

Respondent.

) IN THE COURT OF COMMON PLEAS

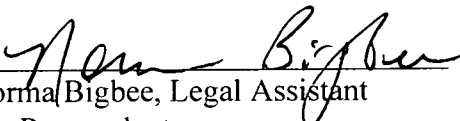
) 2014-CP-26-2301

) AFFIDAVIT OF SERVICE BY MAIL

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:

Terrence L. Cox, #232219  
 Lieber Corr. Inst.  
 P.O. Box 205  
 Ridgeville, SC 29472

DATED this 26<sup>th</sup> day of August, 2015.

  
 Norma Bigbee, Legal Assistant  
 For Respondent

STATE OF SOUTH CROlina	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	Civil Action No.:2014-CP-26-2301
Terrence L. Cox, #232219,	)	
Applicant,	)	
Vs.	)	RESPONSE IN OPPOSITION TO
State of South Carolina,	)	CONDITIONAL ORDER OF DISMISSAL
Respondent.	)	

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Applicant, Terrence L. Cox, pro se, hereby submits his Response in Opposition to the Conditional Order of Dismissal filed, June 1, 2015 and received June 26, 2015.

RESPONSE IN OPPOSITION

In its Conditional Order of Dismissal, the Court found that Applicant's PCR Application is successive and time-barred ; therefore, should be summarily dismissed.

Applicant submits that due to his mental incompetency at his first PCR hearing, he was prevented from assisting his counsel on a fact-based claim of ineffective assistance of counsel and now that he has regain his competency, he his entitled to an evidentiary hearing on his claim. see, Exhibit A (Affidavit). Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004) ("post-conviction petitioner cannot delay his collateral review of his trial proceedings due to his incompetency; however, if, at a future date, the petitioner regains his competency and discovers

that at his original post-conviction relief hearing, his incompetency prevented his ability to assist his counsel on a fact-based claim of ineffective assistance of counsel, he may then raise that claim in a subsequent proceeding"). Additionally, Applicant submits that he has filed the current PCR application within one (1) year after he regained his competency. Applicant submits that he regain his competency January, 2014.

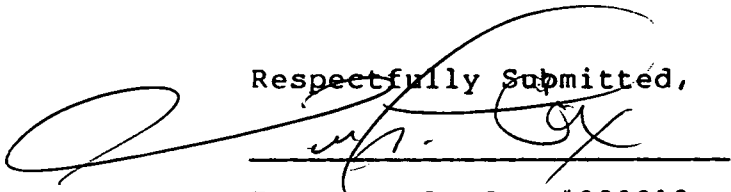
In McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), the Supreme Court held:

"Where an applicant alleges facts that would establish an exception to either the statute of limitation or the prohibition against successive PCR application and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing"

In the present case, Applicant's claim that his mental incompetency at his original PCR hearing prevented him from assisting his counsel on a fact-based claim of ineffective assistance of counsel, establishes an exception to the prohibition against successive PCR application under Catoe. Furthermore, Applicant's claim that he regain his competency January, 2014 and filed his current PCR application within one (1) year after he regained his competency, establishes an exception to the statute of limitation under S.C. Code Ann. 17-27-

10-to 160. These claims must be presumed as true and viewed in the light most favorable to the Applicant. "When considering the state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant". McCoy. Once these facts are presumed true and viewed in the light most favorable to the Applicant, he is entitled to an evidentiary hearing because these facts are not conclusively refuted by the record before the Court. Therefore, this Court should not summarily dismiss Applicant's PCR application.

Finally, this Court must grant Applicant an evidentiary hearing on the merits of his jurisdictional claim. Applicant filed an Amended PCR Application June 25, 2015, and raised the claim of lack of jurisdiction. see, Exhibit B (Amendment). "A defendant may for the first time on appeal raise the issue of a trial court's jurisdiction to try the class of case of which the defendant was conviction". State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Respectfully Submitted,  
  
Terrence L. Cox #232219  
Lieber Corr. Inst.  
P.O. BOX 205  
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No.:2014-CP-26-2301
	)	
Terrence L. Cox, #232219,	)	
	)	
Applicant,	)	
	)	
Vs.	)	AFFIDAVIT OF TERRENCE L. COX
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

Being first duly sworn, personally appeared before me  
Terrence L. Cox, who deposes and states that:

1. My name is Terrence L. Cox; I am over the age of 18 and I  
am competent to testify to the facts set forth herein.

2. I submit this Affidavit in support of my Response in  
Opposition to the Conditional Oder of Dismissal in this case.

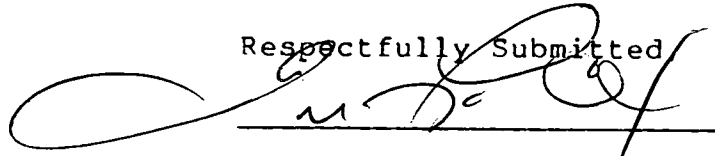
3. I was mentally incompetent during the course of my first  
PCR hearing held on April 27, 2009; I was on medication and was  
not able to assist my lawyer, Paul Archer, on my claims of  
ineffective assistance of counsel.

4. I regained my competency January, 2014 and discovered  
that there were several claims of ineffective assistance of  
counsel that were not raised or inadequately raised at my first  
PCR hearing.

FURTHER THE AFFIANT SAYETH NOT.

I hereby certify that the statements contained in this Affidavit are true and correct to the best of my knowledge and belief.

Respectfully Submitted



Terrence L. Cox #232219  
Lieber Corr. Inst.  
P.O. BOX 205  
Ridgeville, SC 29472

July 10, 2015  
Ridgeville, South Carolina

SWORN to and Subscribed before me

this 10 day of July, 2015.

William B. Glover

Notary Public for South Carolina

My Commission Expires: March 4, 2025

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FOR THE 15th JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-26-2301

Terrence L. Cox, #232219,  
Applicant,

AMENDED APPLICATION FOR POST-  
CONVICTION RELIEF

VS.

(Evidentiary Hearing Requested)

State of South Carolina,  
Respondent.

HORRY COUNTY  
2015 JUN 25 PM 3:08  
CLERK OF COURT

Applicant, Terrence L. Cox, pro se, hereby submits this Amended Application for post-conviction relief, pursuant to Rule 15(a), S.C.R.Civ.P., and would respectfully show this Court:

I.

Applicant hereby reasserts his previous allegations contained in the original application for post-conviction relief filed, April 14, 2014, and incorporate the same herein as if stated verbatim.

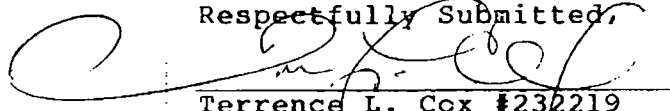
II.

Applicant hereby amends section 11, entitled "state concisely and in the same order the facts which support each of the grounds set out in (10) of the original application.

(c) Lack of jurisdiction

WHEREFORE, Applicant respectfully asks this Court to grant him an evidentiary hearing with the ultimate relief of a new trial.

Respectfully Submitted,



Terrence L. Cox #232219  
Lieber Corr. Inst.  
P.O. BOX 205  
Ridgeville, SC 29472

June 22, 2015  
Ridgeville, South Carolina

Terrence L. Cox # 232219

Lieber Correctional Institution

P. O. Box 205

Ridgeville, SC 29472

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FOR LEGAL USE ONLY

The Supreme Court of South Carolina

P. O. Box 11330

Columbia, SC 29211