

State v. Cox, Op. No. 2008-UP-528 (S.C. Ct. App. filed Sept. 11, 2008). The remittitur was issued on September 29, 2008.

First PCR Application: 2008-CP-26-8058

Applicant filed his first PCR application on October 7, 2008, alleging the following grounds for relief:

1. Failure to object to fatal variances in the indictment, in that the indictments charged him as a principal, yet at trial the hand of one is the hand of all theory was used by the State;
2. Counsel abandoned the Applicant at a critical stage of trial when she conceded material facts and agreed the hand of one is the hand of all doctrine applied in her closing argument;
3. Failure to object when the prosecutor vouched for testimony of a key witness and the co-defendants;
4. Failure to call a key witness at trial; and
5. The trial court abused its discretion in failing to grant counsel's motion for directed verdict and by giving erroneous jury charge on the "hand of one is the hand of all" theory.

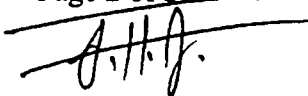
Respondent made its return on December 5, 2008, and an evidentiary hearing was held on April 27, 2009. Paul Archer, Esquire, represented Applicant. The Honorable Steven H. John denied and dismissed the application on May 28, 2009.

Applicant appealed, and the South Carolina Supreme Court denied his *Johnson*¹ petition for a writ of certiorari on April 21, 2011. The remittitur was issued on May 12, 2011.

First Federal Habeas Corpus: 6:11-cv-1535

Applicant filed a pro se federal petition for a writ of habeas corpus on June 22, 2011. Respondent made its return and motion for summary judgment on November 18, 2011. The Honorable Kevin F. McDonald, United States Magistrate Judge, issued a report on July 16, 2012, recommending that Respondent's motion for summary judgment be granted. The Honorable

¹ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).



Cameron McGowan Currie, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice on August 16, 2012.

II.

Applicant filed his *second* and current application on April 14, 2014, alleging the following grounds for relief:

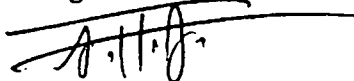
1. 6th Amendment violation:
 - i. Ineffective assistance of counsel.
2. 14th Amendment violation:
 - i. Due process violation.

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

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR 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 earlier 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.

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

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 the allegations could not have been previously raised. *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 a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous application.

IV.

This Court 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 September 21, 2005. The remittitur from Applicant's appeal was issued on September 29, 2008. Therefore, Applicant was required



to file this application on September 29, 2009. Applicant filed this application on April 14, 2014, **more than four years** after the statutory filing period expired.

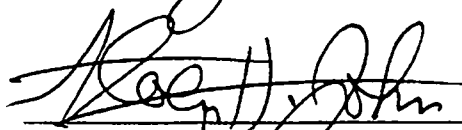
Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application 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 must summarily dismiss this application for 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 Horry County Clerk of Court and shall serve opposing counsel at the following address:

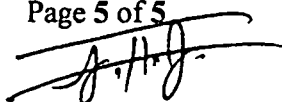
Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 22nd day of May, 2015.



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

Conroy, South Carolina



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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

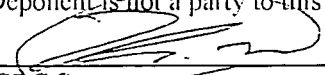
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated Off. Kevin Miller (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 Dorchester)

On this 25th day of June, 2015, I served the signed Conditional Order of Dismissal on Inmate Terrence L. Cox, #232219 by delivering personally and leaving a copy of the same at Lieber Correctional Institution, Ridgeville, South Carolina. Deponent is not a party to this action.

s/ 
SCDC Server

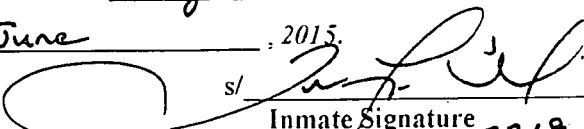
SWORN TO AND SUBSCRIBED BEFORE ME

this 2nd day of July, 2015
Luchean Bryant (L.S.)
Notary Public for South Carolina

My Commission Expires May 26, 2020

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Lieber Correctional Institution, Ridgeville, Dorchester County, South Carolina, this 25th day of June, 2015.

s/ 
Inmate Signature
SCDC No. 232219

2014-CP-26-2301