

Notice of Appeal In a Civil Case  
In the State of South Carolina  
In the Court of Appeals  
In the Supreme Court

Appeal from Horry County  
Court of Common Pleas

William H. Seals, Jr. Judge  
Case no. 2014-CP-26-5195

Jessica E. Kinard (Respondent)  
Damien O. Johnson (Appellant)

Notice of Appeal

Damien O. Johnson appeals the order of dismissal with prejudice from Hon. William H. Seals dated October 28, 2015. The appellant received written notice of entry of this order on November 18, 2015.

Respectfully, Assiduously submitted

SUI JURIS

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DEC 03 2015

SC Court of Appeals

State of South Carolina  
County of Horry  
Damien O Johnson  
v.  
State of South Carolina

In the Court of Common Pleas  
Fifteenth Judicial Circuit  
Docket no 2014-CP-26-05195  
**RECEIVED**

DEC 03 2015

SC Court of Appeals

Affidavit of Service

The undersigned hereby certifies that true copies of the Notice of Intent to Appeal have been served upon the subsequent with due diligence in the above referenced case. The Honorable Clerk of Court of the South Carolina Court of Appeals Jenny Abbott Kitchings P.O. Box 11629 Columbia S.C. 29211 and Hon. Melanie Huggins Ward Horry County Clerk of Court P.O. Box 677 Conway S.C. 29528

Sworn to and Subscribed before

me this 30<sup>th</sup> Day of November

[Signature]

Notary Public for South Carolina

My Commission expires Dec 10, 2024

[Signature]  
SUI JURIS

Damien O Johnson 305511

Tyger River CI 100-200

Prison Rd Enoree SC 29355

SML 23

Application To Proceed Without Payment of Costs **RECEIVED**  
and Affidavit In Support Thereof

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SC Court of Appeals

I Damien Johnson hereby apply for leave to proceed in this action without prepayment of fees or cost or security therefor. In support of my application, I declare under penalty of perjury that the following facts are true.

1) I am the applicant in this action and I believe I am entitled to redress.

2) Because of my poverty and the unknown filing fee, I am unable to pay the costs of said proceedings or give security thereof.

Damien Johnson

Applicant.

NOTARY: Richard A. [Signature]  
DATE: 11-19-15  
EXPIRE: 12-10, 2024

Letter To The Appellate Court Clerk

Filing The Notice Of Appeal

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The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629 Columbia SC 29211

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SC Court of Appeals

RE: Damien Johnson a pro se litigant can predicate Hon Judge Seals made a error in dismissing with prejudice, PCR.

Dear Ms. Kitchings

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

- 1) Proof of Service of the notice of appeal on the respondents
- 2) A copy of the order which is to be challenged on appeal
- 3) An application to proceed without payment of Costs and affidavit in support thereof.
- 4) This appeal is filed with the Court of Appeals on the basis of 2035CACR. There being no statute of limitations on subject matter jurisdiction. See *Means v Warden McCormick* CI NR, in F Supp 2d 2009 WL 483829 also *Campbell v Warden of Broad River* CI NR, F Supp 2007 WL 279188 stating APCR action filed after 1 year period which he could have timely filed. The action was dismissed as untimely in regards to all allegations except the challenge to subject matter jurisdiction. (*Dearbury v State* 625 SE2d 212)
- 5) The petitioner asserts that he did not waive his right to his direct appeal. On the basis of counsel's absence during his direct appeal see *McKnight v State* 465 SE2d 352. Counsel also not assisting petitioner to properly perfect his appeal *Frasier v State* 306 SC 158 410 SE2d 572. Petitioner being constitutionally entitled to effective assistance of counsel on direct appeal *Evitts v Lucey* 105 SCt. 830, *Rogers v State* 99 SE2d 761 and *Wilson v State* 559 SE2d 581. Furthermore there is no statute of limitations on fraud upon the court. So even if the petitioner's statute of limitations was up he was still entitled to a evidentiary hearing on the last argument refer to *Chewing v Ford Motor Co* 354 SC 72 579 SE2d 605.

Damien Johnson 305511

GREENVILLE  
SC 296  
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TYGER RIVER CORRECTIONAL INSTITUTION  
200 PRISON ROAD  
ENOREE, SOUTH CAROLINA 29335



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Honorable Clerk of Court:  
Jenny Abbott Kitchings  
P.O. Box 11629 Columbia  
SC 29211

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SC Court of Appeals

