

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

DEC 03 2015

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

DEC 03 2015

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

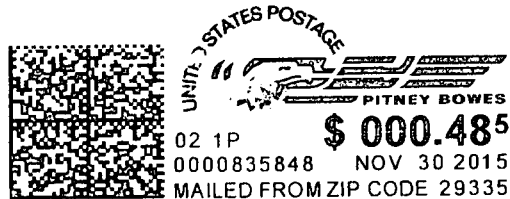
Warden of Broad River CI NR F.Supp 2007 WL 279188 stating A(PCR) action filed after 1 year period which he could have timely filed. The action was dismissed as untimely in regards to all allegations except the challenge to subject matter jurisdiction.

(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 539 SE2d 581. Furthermore there is no statute of limitations on fraud upon the court. So even if the petitioners 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

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

GREENVILLE
SC 296
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DEC 01

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

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THE DEPARTMENT OF CORRECTIONS HAS
NOT CENSORED THIS ITEM. HEREFOR
THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN
COMMUNITIS - TYGER RIVER CORREC ONAL
INSTITUTION, S.C. DEPARTMENT OF
CORRECTIONS.