

Laura R. Baer
P.O. Box 11589
Columbia S.C. 29211-1589

RECEIVED

MAR 29 2016

S.C. SUPREME COURT

RE Request for Appellate counsel's
consideration of merit stated below

I am writing to respectfully request of you as my appellate counsel to consider the fact that concern a vital issue that is essential with respect to mandatory due process "remedial application," and likewise, it is also a comity as held within Martinez v. Ryan, 132 S. Ct. 1309. However the remedial application mentioned above concerns my "initial" collateral review. The Supreme Court held in Martinez; "[t]o present a claim of ineffective assistance at trial in accordance with the state's rules then a prisoner likely needs an effective attorney." However I respectfully inquire of your scrutiny of the July 27th 2015, order granting an appeal.... pursuant to Austin v. State see Exhibit A) with regard to page 2 of 5 which displays that which the state contends that the issues amended provides a successor of my original application, but I had forwarded a July 21, 2015, correspondence informing my P.C.R counsel that the amendments were the same issues that were presented in my original P.C.R application. see Exhibit. B)....

Again, with respect to a mandatory due process remedial application; it was stated within a July 21 2015 correspondence that the amendments had been considered erroneously by the P.C.R court. The Supreme court has repeatedly reminded all involved parties counsel preparing a proposed order should be meticulous in doing so, opposing counsel should call any omission to the

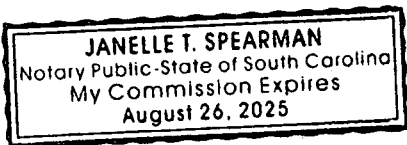
attention of the P.C.R court prior to issuance of the order. see Hall v. Catoe. 360 S.C. 353 365.601 S.E. 2d 335.341 (2005) also see SCACR 501 Judicial conduct. Cannon 3.8 (7) (e)

My P.C.R counsel failed to file a proposed order on my behalf. south carolina Rules of civil Procedure instructs the parties to follow the Rules of civil Procedure to the extent they are not inconsistent with the P.C.R Act. see 71.1(d) SCRPC. Noncompliance pursuant to Rule 71.1(d) provide moot to the effects that is expected of Rule 59 (e) This omission i.e. P.C.R counsel's failer to provide a proposed order on my behalf did so in effect provided a akin to none merit to further aftertime litigation see Martinez v. Ryan 132 S. Ct. 1309.

sworn to and subscribed before me

This 21st day of March 2016

Janelle T. Spearman
Notary Public For South Carolina



Derrick D. Harriott
Derrick D Harriott # 331760
B.R.C.I WAT 165
4460 Broad River Road
Columbia S.C. 29210

(Exhibit A)

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Derrick Damon Harriott, #331760,)
Applicant,)

2014-CP-43-2334

vs.)

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE**

State of South Carolina,)
Respondent.)

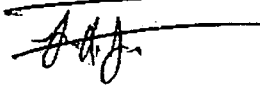
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2015 SEP 17 PM 4:2
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated November 3, 2014. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action on January 6, 2015. An evidentiary hearing on the matter was convened on July 15, 2015 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the Sumter County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the prior PCR records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Sumter Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2008-GS-43-257). William Land, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty but mentally ill



on November 13, 2008. The Honorable George C. James, Jr., sentenced Applicant to life imprisonment without parole.

A timely Notice of Appeal was filed. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

Applicant subsequently filed for post-conviction relief on January 31, 2013 (2013-CP-43-168). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on May 29, 2014, at the Sumter County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. By written Order filed July 11, 2014, Judge Cothran denied and dismissed Applicant's post-conviction relief action.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

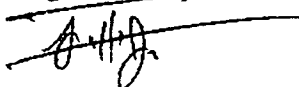
1. Ineffective Assistance of PCR Counsel
 - a. Failure to file a notice of appeal.

Applicant filed his first amendment to his PCR application on July 1, 2015 alleging that he was being held in custody unlawfully based on the following allegations:

1. Trial Counsel was ineffective for failing to petition the court, prior to the petit jury being sworn, for a 'motion to quash' indictment No: 2008-GS-43-257, as being defective, was prejudicial to defense.
2. Trial Counsel was ineffective for failing to object to the Court's verdict form 'not' including all four forms of verdict, when presented to the jury, as required by the statute, was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous



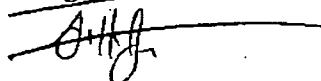
post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2013-CP-43-168). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Prior PCR Counsel, Casey Cornwell, indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

As to Applicant's amended allegations, this Court finds the allegations must be summarily dismissed because they are successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

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

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305

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S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

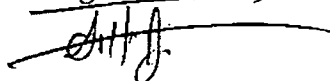
This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why 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 additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 . 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 judgement 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 has held that the 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 Applicant was convicted of the offense(s) he challenges in this Application on November 13, 2008. The South Carolina Court of Appeals affirmed his conviction on August 3, 2012. Therefore, the Applicant was required to file his application by August 4, 2013. This Application was filed on November 3, 2014, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of

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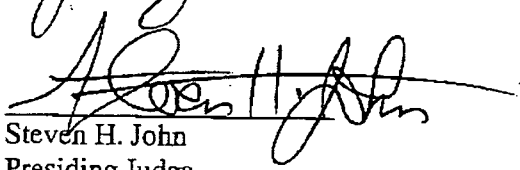
limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the allegations raised in his amended application for post-conviction relief are summarily dismissed for failure to file within the time mandated by statute and for being successive.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2013-CP-43-168) pursuant to Austin v. State is warranted. This Court further finds that the allegations raised in the amended application are successive and barred by the statute of limitations.

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2013-CP-43-168 pursuant to Austin v. State.
3. The remaining allegations filed in Applicant's amended application are successive and barred by the statute of limitations.

AND IT IS SO ORDERED this 27th day of July, 2015.


Steven H. John
Presiding Judge
Third Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF

RECORDED
2014 DEC 18 PM 3:09
JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF (Select one.)
 COMMON PLEAS FAMILY COURT
JUDICIAL CIRCUIT

Derrick Damon
Plaintiff(s),
-vs-
SC State
Defendant(s).

CASE NO.: 2014-CP-43-2334
APPOINTMENT OF COUNSEL OR GAL
(Select one.)
 ORDER
 AMENDED ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILE

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

It appears that ^{Derrick} ~~Harriett~~, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:
Lance Boozer
1331 Park St
Columbia, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that ~~Doy~~ ^{Doy} hereby is appointed as (Select one.)
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 18th DAY OF Dec, 20 14.

(Exhibit B)

Lance S. Boozer
Attorney At Law
807 Gervais Street
Columbia, S.C. 29201

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MAR 29 2016

S.C. SUPREME COURT

July 21, 2015

Dear Mr. Boozer Sir,

This letter is in reference to my most recent P.C.R. Hearing which was held on July 14, 2015 at the Sumter County Courthouse before the Honorable Judge John.

During the course of my hearing the State argued successive, and the Honorable Judge ruled it so in favor of the State.

However Sir I would like to bring to your attention that the issues presented were the same in my original P.C.R. Application, and therefore can not be deemed as successive.

The Judge in my first P.C.R. did not properly ruled upon my issues in his Order of dismissal and that is why they were being presented to the courts a second time. But because these issues does Not result in my Application being successive as the Judge ruled erroneously, I would like for you to file a "Motion To Reconsider" explaining why a reconsideration in this instant case should be

granted.

If for any reason this motion is Not filed with the Courts, and the Judge issues an Order with this ruling enclosed deeming my issues or applicant successive, I would like for you to Object to that Order, file a Motion To Alter and Amend explaining the same as would be done for the "Motion For Reconsideration".

However Sir after all is said and done I would like for you to appeal any adverse decision that is Not in my favor.

Thank you for all of your help and time with me in this very important matter.

Sincerely,
151 Derrick D. Harriott
Derrick D. Harriott, #331760
B.R.C.I. Wateree, #170
4460 Broad River Rd.
Columbia, S.C. 29210

cc:
Filed

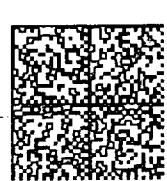
Sworn to and subscribe before me
this 2nd day of July, 2015
Susan H. Frye
NOTARY PUBLIC

My Commission Expires
March 5, 2018

My commission expires March 5, 2018

DERRICK D. HARRIS #531160
B.R.C.I. (Locat. Rm. 285)
4460 Broad River Rd
Columbia, S.C. 29210

Daniel E. Shearhouse
Clerk Of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C. 29211



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