

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

ROGER M. YOUNG, JR., CIRCUIT COURT JUDGE

2014-CP-10-3670

RECEIVED

David Jenkins, Appellant,

vs.

State of South Carolina, Respondent.

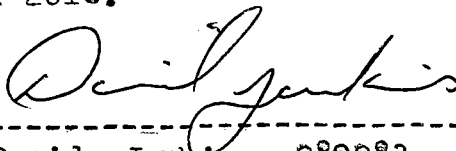
APR 18 2016

S.C. SUPREME COURT

NOTICE OF APPEAL

David Jenkins appeals the 'Final' Order of Dismissal of the Honorable Roger M. Young, Jr., dated 16 March 2016; he received written notice of entry of it on 4 April 2016.

April 12, 2016

/s/ 

David Jenkins, 289283
RCI, SA-54, POB 2039
Ridgeland, SC 29936

Other Counsel of Record:

J. Rubledge Johnson
Ass. Deputy Attorney General
POB 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

ROGER M. YOUNG, JR., CIRCUIT COURT JUDGE

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2014-CP-10-3670

APR 18 2016

DAVIS JENKINS, Appellant,

S.C. SUPREME COURT

vs.

STATE OF SOUTH CAROLINA, Respondent.

PROOF OF SERVICE

I certify that I have served the 'Notice of Appeal' on respondent's attorney:

J. Rutledge Johnson
POB 11549
Columbia, SC 29211

and

Julie J. Armstrong
Clerk of Court
100 Broad Street, Ste. 106
Charleston, SC 29401-2258

by mail, postage prepaid, this 12 day of April 2016.

131 Dylgts

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

RECEIVED

DAVID JENKINS, #289283

APR 18 2016

Applicant,

S.C. SUPREME COURT

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**DAVID JENKINS, #289283
RIDGELAND CORRECTIONAL INSTITUTION
PO BOX 2039
RIDGELAND, SC 29936-2039**

This 29th day of March, 2016.

for J. Rutledge Johnson

J. RUTLEDGE JOHNSON
ATTORNEY FOR RESPONDENT

SWORN to before me this 29th day of March, 2016.

[Signature]

Notary Public for South Carolina.
My Commission Expires: 12/16/2024

CC
AG
AT
ES
SOL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
David Jenkins, #289283,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2014-CP-10-3670

FINAL ORDER OF DISMISSAL

FILED
2016 MAR 29 AM 9:25
JULIA J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 9, 2014. The Respondent made its return on or about September 28, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the prohibition on successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated October 6, 2015 and filed October 9, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 26, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Objection(s) to Conditional Order of Dismissal (COD)," dated October 27, 2015, Applicant argues that his homicide sentence is illegal and trial counsel was ineffective for failing to object to the 40-year sentence. In a document titled "Amended Application for Post-Conviction Relief (APCR) and Objection(s) to COD," dated February 26,

2016, Applicant argues that his sentence for homicide is cruel and unusual punishment and direct appeal counsel was ineffective for failing to raise the error in the reasonable doubt charge.

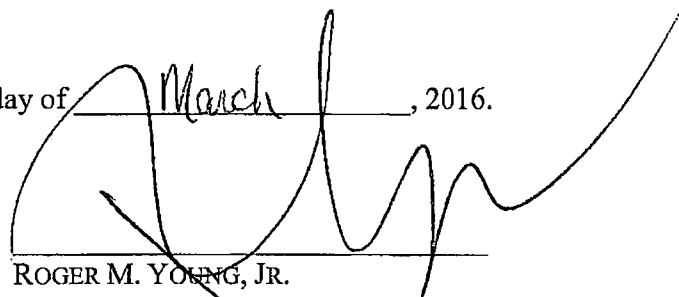
This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court submits that the doctrine of *res judicata* bars the Applicant's claims of ineffective assistance of trial counsel and appellate counsel, as they were raised in Applicant's initial PCR in 2005. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

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 hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 16th day of March, 2016.



ROGER M. YOUNG, JR.
Chief Administrative Judge
Ninth Judicial Circuit Court

Charleston, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

March 22, 2016

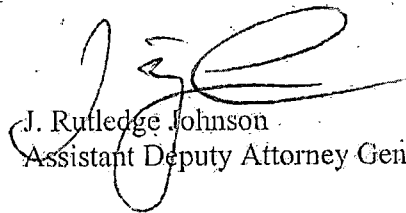
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St. Ste 106
Charleston, SC 29401-2210

Re: David Jenkins, #289283 v. State of South Carolina
2014-CP-10-3670

Dear Ms. Armstrong:

Enclosed please find the signed original **Final Order of Dismissal** in the above captioned case for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737.

Sincerely,



J. Rutledge Johnson
Assistant Deputy Attorney General

JR./jb

cc: David Jenkins, #289283

DC
AG
AT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)
David Jenkins, #289283,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2014-CP-10-3670

CONDITIONAL ORDER OF DISMISSAL

FILED
2015 OCT -9 AM 11:59
JULIE M. COOPER
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed June 9, 2014.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2002 term of the Charleston County Grand Jury for murder (2002-GS-10-3071). The Applicant was represented by Jennifer Shealy, Esquire. On December 5, 2002, the Applicant proceeded to a trial by jury pursuant to which the Applicant was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for a period of forty (40) years.

The Applicant filed a timely Notice of Appeal. The Applicant's appeal was perfected by Joseph Savitz, Esquire, who filed a petition to be relieved. The Applicant filed a pro se response. The Court of Appeals dismissed the Applicant's appeal after review pursuant to Anders and

RMDj/1

Williams.¹ State v. Jenkins, No. 2005-UP-050 (S.C. Ct. App. January 19, 2005). The Applicant filed a Petition for Rehearing and Rehearing En Banc. By Order dated March 17, 2005, the Court of Appeals dismissed the Petition for Rehearing and Rehearing En Banc. The Remittitur was filed April 25, 2005.

2005-CP-10-2682

The Applicant then filed his first application for Post-Conviction Relief on June 27, 2005. The State filed a return on October 4, 2005. The Honorable Daniel F. Pieper signed and filed an Order of Denial July 26, 2007. On July 30, 2007, the Applicant filed a notice of intent to appeal the decision. On March 21, 2008, Applicant's counsel, M. Celia Robinson, Esquire, filed a petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). On October 8, 2008, the Supreme Court of South Carolina issued an order denying a Petition for Writ of Certiorari. The Remittitur was filed on October 24, 2008.

4:09-267-GRA-TER

The Petitioner subsequently filed a Petition for Federal Habeas Corpus on February 4, 2009. The State filed a Return and Motion for Summary Judgment on May 7, 2009. On January 29, 2010, the Honorable Thomas E. Rogers recommended that the Petition be dismissed and the State's Motion for Summary Judgment be granted. By Order signed by the Honorable G. Ross Anderson and filed March 18, 2010, the State's Motion for Summary Judgment was granted and the Petition denied.

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

¹ Anders v. California, 386 U.S. 738 (1967); State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991).

RMDK/2

1. "Unlawful Sentence"
2. "Ineffective assistance of counsel"
3. "Community Supervision Program (CSP) unlawfully applied to sentence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is 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 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 December 5, 2002. The Remittitur following Applicant's unsuccessful appeal was issued on April 25, 2005. The Applicant therefore was required to file his application on or before April 26, 2006. This Application was filed on June 9, 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 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 application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

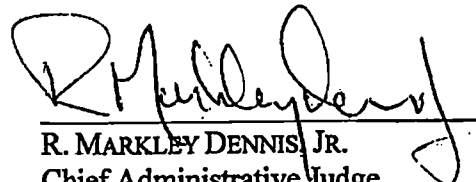
RMDJ/4

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 6th day of October, 2015


R. MARKLEY DENNIS, JR.
Chief Administrative Judge
Ninth Judicial Circuit

Monica Turner, South Carolina

RMDx/5

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

ROGER M. YOUNG, JR., CIRCUIT COURT JUDGE

RECEIVED

2014-CP-10-3670

APR 18 2016

David Jenkins, Appellant,

S.C. SUPREME COURT

vs.
State of South Carolina, Respondent.

APPEAL RESPONSE TO 3-16-16 ORDER

1. The 3-16-16 order failed to address or discuss whether Jenkins was denied the actual effective assistance of direct appeal counsel for failure to challenge the reasonable doubt instruction which was preserved for direct review;
2. The 3-16-16 order points to 40 year illegal sentence, pointing ineffective assistance of trial counsel for failure to oppose illegal sentence prior to 2010 for homicide but failed to entertain claim under Ezell v. State, 548 S.E.2d 852 (2001);
3. The 3-16-16 order failed to address or discuss whether Jenkins should receive the benefit of State v. Belcher, 685 S.E.2d 802 (2009) where jury was charged malice inference from use of a deadly weapon;
4. Why 40 year sentence is not illegal under South Carolina cruel and unusual punishment clause? State v. Brown, 326 S.E.2d 410 (1995) Moreover, why was not issue raised during direct ap-

appeal.

April 12, 2016

/s/ 

David Jenkins, 289283
RCI, SA-54, POB 2039
Ridgeland, SC 29936

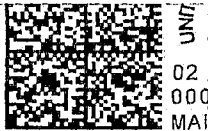
Copy mailed this date _____

of April 2016 to:

J. Rutledge Johnson
POB PD549
Columbia, SC 29211

s/ _____

R.C.I.
Pobox
Ridgeland, S.C. 29936



**RIDGELAND CORRECTIONAL
INSTITUTION**
APR 12 2018
MAILROOM

To: CLERK'S OFFICE
SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA