

**RECEIVED**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

JUN 06 2016 IN THE SUPREME COURT

CURTIS LEMON, 256984  
APPLICANT

S.C. SUPREME COURT

CASE NO: 2016-001001

-VS-  
STATE OF SOUTH CAROLINA,OBJECTION AND RESPONSE  
TO  
CONDITIONAL ORDER OF  
DISMISSAL

The applicant will respectfully show this Honorable Court the following specific reasons, factual and legal, why it should not dismiss this matter.

FACTUAL

On June 24, 2014 Judge Rodger M. Young, SR. denied applicant's Post Conviction DNA Testing Act application. Applicant appealed it to the Court of Appeals. The Court of Appeal contacted Mr. Uricchio on October 20, 2014 to inform him of the deficiencies that have been noted under the South Carolina Appellate Court Rules (SCACR), and that any deficiency must be corrected within ten (10) days. Mr. Uricchio did not correct applicant's notice of appeal and it was remitted back to the lower courts on January 28, 2015. This remittitur is what applicant PCR was filed to on March 13, 2015, which will be only three (3) months after the sending of the Remittitur.

Under the PCR rules, Rule 71.1. (g) Appellate Review; Continuing Representation. A final decision entered under the Act shall be reviewed according to the procedure specified by Rule 243, SCACR. If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.

Legal

Rule 17-27-45.(A). Filing procedures for post-conviction relief applications.

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

In *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996), states that; The legislature may reduce the period in which action may be brought and may make such reduction applicable to existing causes of action however, no new limitation shall be made to affect existing claims without allowing a reasonable time for parties to bring action before their claims are absolutely barred by a new enactment. *Gillespie v. Pickens County*, 197 S.C. 217, 14 S.E. 2d 900 (1941); *Stoddard v. Owings*, 42 S.C. 88 20 S.E. 25 (1894); 16 AC. J.S. Constitutional Law § 271 (1984).

See also *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). An Austin appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. Austin appeals are considered "belated appeals" and are used to rectify unjust procedural defects, such as when an attorney does not file a timely appeal.

#### Statute of limitations;

One year limitations period governing application for post-conviction relief begins to run from date remittitur is sent by appellate court on direct appeal, not from date of conviction. See *McCoy v. State* (S.C. 2013) 401 S.C. 363, 737 S.E. 2d 623. Criminal Law 1586.

### Successiveness

#### FACTUAL

Applicant filed an application for post-conviction relief March 13, 2015; applicant raised (2) claims of ineffective assistance of counsel;

- (a) Failure to protect my rights pursuant to S.C. Code Ann § 17-27-100;
- (b) Right to seek appellate review of the denial of applicant's application for Forensic DNA Testing PCR

Applicant filed an amended PCR application on April 13, 2015, with the same grounds of ineffective assistance of counsel;

- (a) Failure to protect my rights pursuant to S.C. Code Ann § 17-27-100;
- (b) Right to seek appellate review of the denial of my PCR application.

This amended application was sent to me by the court because the first application was missing pages 2 & 4 from it. The court suggested that I may want to file an amended PCR.

LEGAL

Tilley V. State 511 S.E. 2d 689 (S.C. 1999)  
 1. Successive Application

[1,2] A successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. S.C. Code Ann. § 17-27-90 (1976 & Supp. 1997).

17-27-90. Grounds For relief. States that;

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 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.

17-28-50 (C) Says;

At any time prior to entry of judgment the court may when appropriate, issue orders for amendment of the application and for any documents related to the application including, but not limited to, pleadings, motions, and requests for extensions of time.

CONCLUSION

There was only three (3) months between the sending of the remittur and applicant's Notice of Appeal. Statute of limitation is one year, and for successiveness, the applicant will show this court proof that the clerk of court ask him to send an amended PCR, that stated the same two (2) claims as the original. The state noted that in *Aice V. State* Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. *Aice* also states that at some juncture judicial review must stop, with only the very rarest of exception, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. In support of applicant's petition he respectfully submits in support thereof under the South Carolina Rules of Evidence, Exhibits 1 and 2.

Respectfully submitted

Curtis Lemon  
 Curtis Lemon

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**RECEIVED**

Roger M. Young, Sr. Circuit Court Judge

JUN 06 2016

S.C. SUPREME COURT

Case No. 2016-001001

J. Rutledge Johnson  
Attorney General's Office,

Respondent,

v.

Curtis Lemon

Appellant.

PROOF OF SERVICE

I certify that I have served the Objection and Response on Daniel E. Shearouse by depositing a copy of it in the United States Mail postage pre-paid, on June 2, 2016 addressed to her Clerk of Court Office Post Office Box 18330 Columbia, South Carolina 29211.

June 2, 2016

Curtis Lemon  
Curtis Lemon #256984  
MacDougal CI M-1A-13-A  
1516 Old Gilliard Rd  
Ridgeville, SC 29472-7468  
PRO-SE Appellant

COURT OF COMMON PLEAS AND GENERAL SESSIONS  
100 BROAD STREET, SUITE 106  
CHARLESTON, S.C. 29401-2255  
(843) 958-5000  
(843) 958-5020 FAX  
www3.charlestoncounty.org



FAMILY COURT OF THE NINTH JUDICIAL CIRCUIT  
CHARLESTON COUNTY  
100 BROAD STREET, SUITE 103  
CHARLESTON, S.C. 29401-2265  
(843) 958-4400  
(843) 958-4434 FAX  
www3.charlestoncounty.org

JULIE J. ARMSTRONG  
CLERK OF COURT  
CHARLESTON COUNTY

From: Clerk of Court, Charleston County, South Carolina.

The enclosed document is being returned for the following reason(s);

- The document is not signed / notarized.
- The filing fee is insufficient. The correct amount is: \_\_\_\_\_
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- The check or money order must be made payable to the Clerk of Court.
- This case is ended. Date ended: \_\_\_\_\_  
Reason ended: \_\_\_\_\_
- Your check must be signed.
- Inmate litigation must comply with S. C. Code of Laws, Title 24, Chapter 27.
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at www3.charlestoncounty.org.
- The required **new** case coversheet is not included. (SCCA234)
- The required **motion/order** coversheet is not included. (SCCA/233)
- The required **order (Form 4)** coversheet is not included. (SCRCP Form 4C)

Other: Enclosed is a copy of your filed PCR. I just realized you are missing pages 2 & 4. Just a suggestion, you may want to file an amended PCR application which I have enclosed.

Please make the necessary corrections and return this document for filing. Thank you for your assistance. This way ensure there is no missing information.

Staff initials Travis,

Date 4/1/15



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

October 20, 2014

Mr. Michael A. Uricchio, Esquire  
3842 Leeds Ave  
Suite B  
N. Charleston SC 29405

Re: The State v. Curtis J. Lemon  
Appellate Case No. 2014-002052

Dear Counsel:

Upon reviewing the notice of appeal and subsequent letter filed by your client, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The notice of appeal is not accompanied by the order and/or judgment challenged on appeal.
- Pursuant to Rule 264, SCACR, you remain counsel of record until withdrawal is approved by order of the Court.

Curtis Lemon 256984  
MacDougall CI M-1-A-13-A  
1516 Old Gilliard Rd.  
Ridgeville SC 29472

Daniel E. Shearouse  
Clerk Of Court  
P.O. ~~Box~~ Box 11330  
Columbia SC 29211

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JUN 02 2016

MacDougall Corr. Inst.  
Mailroom



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