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JUN 06 2016

State of South Carolina  
In The Supreme Court

Appeal From Greenville County  
Court of Common Pleas

Honorable Robin B. Stilwell - Chief Admn. Judge

Case No. 2015-CP-23-2623

Furman E. Thompson

Petitioner,

v.

State of South Carolina

Respondent.

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NOTICE OF APPEAL

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The Petitioner above-named hereby appeals the Conditional Order of Dismissal issued by the Honorable Robin B. Stilwell in this post-conviction matter, dated and filed on April 28, 2016, and received by the Petitioner on May 4, 2016.

Respectfully Submitted  
Furman E. Thompson  
Petitioner (Pro Se)

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State of South Carolina  
In The Supreme Court  
Appeal From Greenville County S.C. SUPREME COURT  
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Honorable Robin B. Stilwell - Chief Admn. Judge  
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CERTIFICATE OF SERVICE

I, Furman E. Thompson, Petitioner, certify that I have served the within Notice of Appeal upon the Honorable Court, by U.S. Mail, postage prepaid, addressed as follows:

Hon. Daniel E. Shearouse  
Clerk - S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

I further certify that all parties required by Rule have been served on this 31 day of May, 2016.

Furman E. Thompson  
Petitioner (Pro Se)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Furman Elliott Thompson, )  
 S.C.D.C. No. 70450, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2015-CP-23-2623

FILED - CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2016 APR 29 AM 10 33

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 20, 2015. The Respondent made its return on September 17, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against 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 signed October 13, 2015 and filed October 23, 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 November 30, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion to Show Cause" and filed November 25, 2015, the Applicant argues the one-year statute of limitations does not apply in his case because he is arguing the right to a belated PCR appeal under Austin v. State, 305 S.C. 453, 409 S.E.2d 395

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(1991). The Applicant argues – in the “Excerpt” – that he is raising “Unexhausted State Remedy(ies)/PCR Error.” The Applicant argues the PCR judge in his first PCR action did not rule upon all the issues and that his appellate attorney did not raise all available issues in the appeal from the denial of his first PCR application.

This Court has reviewed the Applicant’s response to the Conditional Order of Dismissal in its 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 notes the Applicant was convicted and sentenced on July 14, 20015 and the South Carolina Court of Appeals affirmed on June 18, 2007. As this action was filed on April 20, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant’s second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on September 22, 2008. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court finds the Applicant’s assertion that this second PCR application serves as an Austin appeal is without merit. The Applicant had an appeal from the denial of his first PCR application and all issues from his first PCR case should have been raised at that time. This Court notes the PCR appeal was made in the form of a Johnson petition, which allowed the Applicant to also submit a pro se brief outlining his issues. This Court finds the Applicant’s

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allegation of Austin does not serve to circumvent the one-year statute of limitations and the presumption against successive PCR applications.

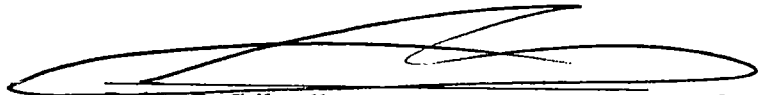
This Court finds the Applicant's allegation that his PCR appellate counsel was ineffective because meritorious issues were not raised is without merit. "Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). Appellate counsel is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. See Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765. This Court finds the Applicant's allegation in this matter is without merit. This finding is supported by the fact that the appeal from the denial of the Applicant's first PCR application was a Johnson petition, which (1) afforded the appellate court the opportunity to review the appellate record in full and (2) allowed the Applicant to also submit a pro se brief outlining his issues.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 27 day of April, 2016.



Robin B. Stilwell  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Charleston, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Furman Elliott Thompson, )  
 S.C.D.C. No. 70450, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2015-CP-23-2623

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL D. WIGENSIMER  
 2015 OCT 23 PM 4:02

**CONDITIONAL ORDER OF DISMISSAL**

ENTERED COMPUTE

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 20, 2015. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for first-degree burglary (2004-GS-23-6157) and attempted armed robbery (2004-GS-23-6158). He was represented by Ernest Hamilton, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 14, 2005, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of 20 years for first-degree burglary and 10 years for attempted armed robbery.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Eleanor Duffy Cleary, Esquire of the South Carolina Office of Appellate Defense

*AS?*

perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on June 18, 2007. State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007).

**2007-CP-23-6962**

The Applicant filed a PCR application on October 18, 2007 (2007-CP-23-6962). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
  - a. Failed to make necessary objections to errors of the court and/or solicitor during the trial.
  - b. Failed to file various motions in a timely manner (such as for a preliminary hearing).

An evidentiary hearing was held on September 22, 2008 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable Carmen T. Mullen denied and dismissed the PCR application by order filed November 17, 2008. By order filed February 3, 2009, Judge Mullen denied the Applicant's subsequent Rule 59(e), SCRCF motion.

The Applicant filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson<sup>1</sup> petition. The South Carolina Supreme Court denied the petition for writ of certiorari on June 25, 2010. The remittitur was issued on July 13, 2010.

**Federal Habeas Corpus**

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (2:10-2103-DCN-RSC). The Respondent submitted a motion

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

for summary judgment on September 30, 2010. The United States Magistrate Judge issued a report and recommendation to grant the motion for summary judgment dated July 28, 2011. On August 12, 2011, the Honorable David C. Norton, United States District Judge, issued an order granting the motion for summary judgment and denying a certificate of appealability.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 2, 2012, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

## II.

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

1. "Due Process Violation (Certiorari Level)."
2. "Ineffective (Appellate) Counsel."

## III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina 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 judgment 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 Applicant was convicted of the offenses he challenges in this application on July 14, 2005 and the South Carolina Court of Appeals affirmed the convictions and sentences on June 18, 2007. The Applicant was therefore required to file his application before June 18, 2008. This

application was filed on April 20, 2015, which was more than 6 years and 10 months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

#### IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

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 that resulted in the conviction or sentence or in any other 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the

Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 13 day of OCT, 2015.



Robin B. Stilwell  
Chief Administrative Judge  
Thirteenth Judicial Circuit

GREENVILLE, South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Furman Elliott Thompson, 70450 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-23-2623

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS  
2015 OCT 02  
PM 4

Plaintiff's Attorney:  
Furman Elliott Thompson, 70450, Bar No.  
Address:  
TRCI 100-200 Prison Road Enoree SC 29335  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
Karen C. Ratigan, Sadag, Bar No. 6833 F  
Address:  
Post Office Box 11549 Columbia SC 29211-1549  
phone: (803) 734-3737 fax: (803) 734-4113  
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

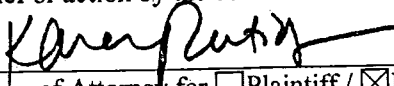
Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

September 17, 2015  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT:
- EXEMPT:  Rule to Show Cause in Child or Spousal Support  
(check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter:  
 Other:

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Date Filed:

Collected by: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_