

Darriel L. Cobbs, #268054
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

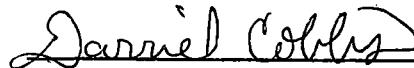
The Supreme Court of South Carolina
Office of the Clerk
P.O. Box 11330
Columbia, South Carolina 29211

RE: DARRIEL L. COBBS vs. STATE OF SOUTH CAROLINA
Case No: 2013-CP-18-02039

Dear Clerk:

Enclosed for filing is a notice of appeal in the above case

Sincerely



Darriel L. Cobbs
Lee Correctional Inst.
990 Wisacky Highway
Bishopville, SC.

CC: Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC. 29211

Date: 4/19/17

RECEIVED

APR 21 2017

S.C. SUPREME COURT

RECEIVED

APR 21 2017

STATE OF SOUTH CAROLINA

In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

CASE NO: 2013-CP-18-02039

DARRIEL L. COBBS,

APPELLANT,

-vs-


STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Darriel L. Cobbs, appeals the order of the Honorable Diane S. Goodstein dated March 27, 2017, and filed on April 5, 2017. Appellant received written notice of entry of this order on the 14th day April, 2017.

DATE: 4/19/17



Darriel L. Cobbs
Lee Correctional Inst.
990 Wisacky Highway
Bishopville, SC. 29010
APPELLANT, PRO SE.

OTHER COUNSEL OF RECORD:

Office of the Attorney General
State of South Carolina
P.O. Bos 11549
Columbia, SC. 29211
COUNSEL FOR RESPONDENT

RECEIVED

APR 21 2017

STATE OF SOUTH CAROLINA

In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

CASE NO: 2013-CP-18-02039

DARRIEL L. COBBS,

APPELLANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Darriel L. Cobbs, hereby declare under the penalty of perjury, that on this date, I have served a copy of Appellant's Notice of Appeal, upon the respondent, by placing a copy of same, in prison officials mailroom hands, for depositing in the United States Mail, addressed to the attorney of record, Office of the Attorney General, State of South Carolina, P.O. Box 11549, Columbia, SC. 29211.

DATE: 4/19/17

Darriel Cobbs

Darriel L. Cobbs
SCDC No: 268054
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

APPELLANT

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1802039

Daniel L Cobbs

FILED-RECORDED
2015 DEC 10 PM 2:58
C. CRYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/Maite' Murphy
Chief Adm. Judge

2166
Judge Code

12-2-15
Date

For Clerk of Court Office Use Only

This judgment was entered on 12-10-2015, and a copy mailed first class or placed in the appropriate attorney's box on 12-10-2015, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel L. Cobbs Perry Correctional Institute, # 268054 430
Oaklawn Road Pelzer, SC 29669

Clay Mitchell PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

RECORDED
2015 DEC 10 PM 2:59

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Darriel L. Cobbs, #268054,

Applicant,

SHERRY GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2013-CP-18-02039

v.
State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed November 19, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted at the May 2000 term of the Dorchester County Grand Jury for Murder (2000-GS-18-00375). Applicant was represented on the charges by Marva Ann Hardee-Thomas, Esquire. Applicant proceeded to trial before the Honorable Luke N. Brown on July 19-20, 2000. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to confinement for his natural life.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Pachak of the South Carolina Office of Appellate Defense represented Applicant on his appeal, submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and petitioned the court to be relieved as counsel on July 26, 2001. Applicant did not file a *pro se* response. The South Court of Appeals dismissed the appeal and granted counsel's request to be relieved. State v. Cobbs, Op. No. 2002-UP-134 (S.C. Ct. App. filed February 21, 2002). The remittitur was issued on March 26, 2002.

2002-CP-18-0649

Applicant subsequently filed an application for post-conviction relief on April 22, 2002, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistant of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Denial of Due Process.

Respondent filed its return on or about October 30, 2002. An evidentiary hearing was convened on April 26-27, 2005, at the Dorchester County Courthouse. Applicant was present and represented by counsel Norbert S. Cummings, Jr. and Henry R. Schlein, Esquires. The State was represented by Assistant Attorney General Paula S. Magargle. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Marva Ann Hardee-Thomas. On July 19, 2005, the Honorable Diane S. Goodstein issued an Order of Dismissal finding that the issues raised by Applicant lacked merit.

On August 2, 2005, Applicant then filed a Motion for Reconsideration, *pro se*, stating that the signed Order of Dismissal did not contain specific rulings by the court on issues raised in Applicant's application. The State filed its return to this motion on or about August 15, 2005. Judge Goodstein signed an order dated September 20, 2005 denying Applicant's Motion to Alter or Amend.

Applicant attempted to appeal the decision made by the PCR court and filed a timely notice of appeal. Applicant was represented by Chief Appellate Defender Wanda H. Carter of the South Carolina Office of Appellate Defense. Counsel filed ^{a M}petition for writ of certiorari on Applicant's behalf on or about February 16, 2006, raising the following issues:

1. Did trial counsel err in failing to request charges on the law of accident and involuntary manslaughter?
2. Did trial counsel err in failing to object to trial judge's refusal to charge the law on voluntary manslaughter?

3. Did trial counsel err in failing to object to the "prior difficulties" evidence?
4. Did trial counsel err in failing to put forth a mental illness defense and request a charge on the same at trial?
5. Did the PCR court err in denying petitioner's allegation in effect that he did not voluntarily and intelligently waive his right to testify at trial?
6. Did trial counsel err in failing to object to the trial judge's reasonable doubt instructions?

Respondent filed its return to the Petition for Writ of Certiorari on or about July 3, 2006. This case was then transferred from the South Carolina Supreme Court to the Court of Appeals. The South Carolina Court of Appeals denied petitioner's writ of certiorari by order dated May 21, 2008. The remittitur was issued on June 6, 2008.

2009-cv-00528-CMC

Applicant then filed a petition for writ of habeas corpus on March 5, 2009, in federal district court. Petitioner raised the following issues verbatim:

1. Trial court erred in refusing to instruct on voluntary manslaughter.
2. Trial court erred in admitting, over objection, unnecessarily prejudicial photograph of Petitioner Cobbs after his arrest through Officer Robert Gabriele.
3. Trial court erred in ruling, over objection, that a photograph of the victim would be admitted.
4. Counsel failed to object under SCRE Rule 401, 403, 404(b) to evidence of "prior difficulties" during witness Nicole Nettleford's testimony.
5. Counsel failed to object to Regina Baxter's testimony as hearsay testimony in a telephone call that he was going to put the victim "eight feet under."
6. Trial counsel failed to put forward a mental health defense.

On July 10, 2009, the Respondent filed a return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated March 16, 2010, finding that Petitioner's claims were without merit. Applicant appealed this order to the

Fourth Circuit Court of Appeals who mandated the judgment on November 17, 2010. Applicant then filed a Notice of Intent to Petition for Writ of Certiorari to the U.S. Supreme Court.

CURRENT APPLICATION

In his second and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Initial-Review Collateral Counsel."
2. "Denial of Meaningful Initial Collateral Review; Due Process."
3. "Conflict of Interest; Direct & Collateral Appellate Counsel."

Applicant supports his allegations through an attachment where he cites the recent Supreme Court case of Martinez v. Ryan, __ U.S. __, 132 S.Ct. 1309 (2011). Applicant acknowledges that "South Carolina is under no expressed duty to entertain the merits of this current application for Post-Conviction Relief (PCR), despite the fact that federal courts of review have been recently empowered to do so." Applicant states he believes "that the judiciary for the State of South Carolina may well recognize . . . an expressed duty to review the merits of PCRs" and that Martinez "is only a 'first step' action by the United States Supreme Court toward balancing the egregious unfairness" in the State's collateral review process. The Applicant goes on to say that he "presents to the State of South Carolina this PCR as a 'first instance opportunity' for the State to take corrective action."

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. 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.

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 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).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also 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, et. seq. 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 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 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 found guilty on the offenses he challenges on July 20, 2000. The remittitur from Applicant's direct appeal was issued on March 26, 2002, so he was, therefore, required to file his application on or before **March 26, 2003**. This application was filed on November 19, 2013, which was over ten (10) years 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) (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 the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Ineffective Assistance of Prior PCR Counsel

In addition to these allegations being barred by the Uniform Post-Conviction Procedure Act, and being procedurally barred, this Court finds there is no merit to the allegation of ineffective assistance of prior collateral counsel. The Applicant contends he is able to file a successive state PCR action alleging ineffective assistance of previous collateral counsel. This Court finds this contention to be without merit, as the ruling in Martinez v. Ryan, 132 S. Ct. 1309 (2012) has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 2546, 2565 (1991) ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See Martinez, *supra* at 6 ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial.").

With this framework in mind, it is clear Martinez has no application to successive state PCR actions, as the fundamental "cause and prejudice" standard on which Martinez relies is

exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” Id.

Additionally, Martinez’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court’s opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”) The South Carolina Supreme Court has found – in a published order – that “the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013). This Court finds Applicant’s contention that Martinez allows him to bring this untimely and successive state PCR application is misguided and erroneous.

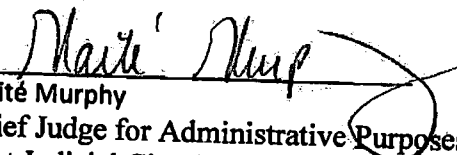
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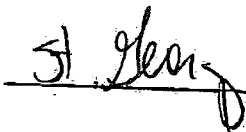
III. CONCLUSION

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 Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 1st Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 2 day of Dec, 2015.


Maité Murphy
Chief Judge for Administrative Purposes
First Judicial Circuit


J. Glenn, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

DARRIEL L. COBB, #268054

Plaintiff

vs.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

FILE NO.: 2013-CP-18-2039

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Darriel L. Cobb, #268054, Bar No. _____

Address:

Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

J. Clayton Mitchell, Bar No. _____

Address:

SC Attorney General's Office
PO Box 11549
Columbia SC 29211

Phone: _____ Fax: _____

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

November 17, 2015
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____

EXEMPT:
(check reason)

- Rule to Show Cause in Child or Spousal Support
 - 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

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1802039

CERTIFIED COPY

Dariel L Cobbs

2017 APR -5 PM 3:13

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

4/5/2017
Date

For Clerk of Court Office Use Only

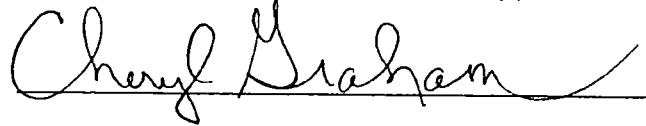
This judgment was entered on 4/5/2017, and a copy mailed first class or placed in the appropriate attorney's box on 4/5/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Dariel L Cobbs Perry Correctional Institute, # 268054 430
Oaklawn Road Pelzer, SC 29669

Ruston Wesley Neely PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Darriel L. Cobbs, #268054,

2017 APR -5 PM 3:13

2013-CP-18-2039

Applicant,

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

FINAL ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) November 19, 2013. Respondent made its return on or about May 5, 2014, requesting the application be summarily dismissed based upon 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 December 2, 2015 and filed December 10, 2015, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service 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 January 15, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a *pro se* response captioned "Applicant Objection to Respondent Conditional Order of Dismissal," on July 7, 2014, in which Applicant argues his second PCR application should not be dismissed and asks this Court to reverse and remand this matter for hearing based on the fact that the Conditional Order of Dismissal was issued in error because genuine issues of material facts exist as to whether Applicant's claims are successive or barred

by the statute of limitations. Applicant does not, however, expound on what the genuine issues of material facts may be.

Applicant then filed a *pro se* response titled, "Applicant Objection to Respondent Conditional Order of Dismissal," on November 30, 2015, in which Applicant again states exactly the same as his first objection. However, Applicant also argues that the Conditional Order of Dismissal should be summarily dismissed and default against the State be granted because the State failed to comply with the filing procedures. Subsequently, Applicant filed the same document titled, "Application Objection to Respondent Conditional Order of Dismissal," on December 21, 2015 and January 22, 2016, argues the same as his previous objections.

This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant still fails to state a cause of action upon which relief can be granted, and has presented no reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

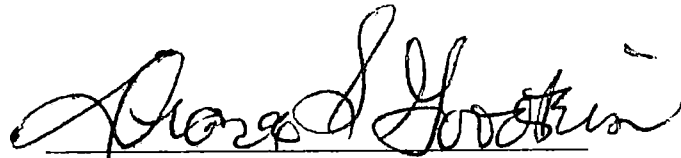
This Court also denies Applicant's motion for default. For an applicant to be granted default judgment in post-conviction relief, he must show prejudice from the State's delay in failing to timely answer his Application. See Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring, 262 S.C. at 598, 206 S.E.2d at 886. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). This Court finds that Applicant has failed to demonstrate the requisite prejudice or merit to his application. Therefore, the motion for default judgment is denied. Similarly, this Court finds that the issuance of this order moots all

remaining other motions and petitions from Applicant upon which judgment has not yet been made. These are, accordingly, denied.


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 27 day of March, 2017.



Diane S. Goodstein
Chief Judge for Administrative Purposes
First Judicial Circuit



South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Earlena Bonenberger (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

AFFIDAVIT OF PERSONAL SERVICE

On this 15th day of January 2015, I served the **Conditional Order of Dismissal**, on **Inmate Darriel L. Cobbs**, SCDC Inmate # **268054**, by delivering personally and leaving a copy of the same at **Perry Correctional Institution, Pelzer, SC**. Deponent is not a party to this action.

Earlena Bonenberger

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 15 day of January, 2015 @

Tamara Conwell (L.S.)

Notary Public for South Carolina

My Commission Expires: Sept-25-2023

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Perry **Correctional Institution**), Pelzer, Greenville County, SC this 15th day of January, 2015.

s/ Darriel Cobbs

Inmate
SCDC Inmate #: 268054

Darriel L. Cobbs, #268054
Lee Correctional Institution
F-1-A Unit, Room No: 2132
990 Wisacky Highway
Bishopville, South Carolina 29010

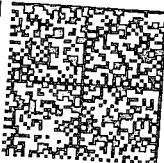
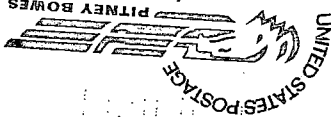


THE SUPREME COURT OF SOUTH CAROLINA
Office of the Clerk
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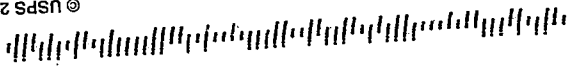




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