

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

JOSHUA LAMAR FORREST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001450

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA		COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON		
STATE OF SOUTH CAROLINA	)	
-vs-	)	TRANSCRIPT OF RECORD
JOSHUA L. FORREST, ET AL,	)	98-GS-32-2369
Defendants.	)	

November 17, 2005
Lexington, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S:

ANGELA G. AVINGER, Asst. Solicitor
Attorney for the State.

Joshua L. Forrest appeared pro se

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

INDEX

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 November 17, 2005).

3 CLERK: Indictment 2005-GS-32-4227, the State
4 versus Rebecca Bales, indicted for forgery less than
5 \$5,000, she is pleading to forgery with no dollar
6 amount. She is waiving presentment to the grand jury
7 and represented by Mr. Beacham.

8 On Indictment 2005-GS-32-3574, the State
9 versus Pamela Hoffman, indicted for breach of trust
10 \$5,000 or more, she is pleading to breach of trust 1,000
11 to \$5,000.

12 On Indictment 2003-GS-32-3943, the State
13 versus Pamela Hoffman, indicted for burglary second
14 nonviolent, she is pleading as charged. They have been
15 true billed, and she is represented by Mr. Beacham.

16 On Indictment 98-GS-32-2369, the State versus
17 Joshua Forrest, he is indicted for attempted armed
18 robbery, he is pleading as charged. It has been true
19 billed, and he is waiving his right to an attorney.

20 If you would please raise your right hands.

21 REBECCA BALES, PAMELA HOFFMAN,
22 AND JOSHUA FORREST are first duly sworn.

23 PROBATION OFFICER: Your Honor, excuse me,
24 Ms. Hoffman is on probation. Today's plea will be a
25 violation, and she is also in the violation process

1 previously.

2 THE COURT: Do you want to take care of that
3 today?

4 MR. BEACHAM: Yes, we do.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How old are you, Ms. Bales?

7 THE DEFENDANT: Thirty.

8 THE COURT: What is the highest grade you
9 finished?

10 THE DEFENDANT: Graduated.

11 THE COURT: What kind of work do you do?

12 THE DEFENDANT: Cashier, assistant manager at
13 Citgo.

14 THE COURT: What is your marital situation?

15 THE DEFENDANT: Married.

16 THE COURT: Kids?

17 THE DEFENDANT: Yes, sir, two.

18 THE COURT: How old are they?

19 THE DEFENDANT: Seven and nine.

20 THE COURT: How many days have you been in
21 jail?

22 THE DEFENDANT: Altogether on this charge,
23 167.

24 THE COURT: Ms. Hoffman, how old are you?

25 THE DEFENDANT: Thirty-five.

1 THE COURT: What is the highest grade you
2 finished?

3 THE DEFENDANT: Twelfth.

4 THE COURT: What kind of work do you do?

5 THE DEFENDANT: Waitressing.

6 THE COURT: What is your marital situation?

7 THE DEFENDANT: Married.

8 THE COURT: Kids?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Ages?

11 THE DEFENDANT: Eighteen, thirteen, and ten.

12 THE COURT: Days in jail?

13 THE DEFENDANT: I'm thinking close to 500.

14 THE COURT: How many?

15 MR. BEACHAM: Your Honor, I did the math on it
16 earlier. It's 500.

17 THE COURT: Five hundred?

18 MS. AVINGER: That's not right. There is no
19 way. She was picked up on a bench warrant after July.
20 The bench warrant was issued in July of this year.

21 THE COURT: July what?

22 MS. AVINGER: Your Honor, I'm looking. It's
23 not my file. I'm sorry, Your Honor, I was talking about
24 Ms. Bales. I apologize.

25 (Pause).

1 MR. MOSES: She was arrested this time around,
2 Your Honor, on April 22nd of 2005. I don't think that
3 she has been in jail since her arrest. I think she got
4 out, and she was picked up on a bench warrant.

5 Have you been in jail since your arrest?

6 THE DEFENDANT: No, sir.

7 MR. MOSES: When did you get picked up on the
8 bench warrant?

9 MR. BEACHAM: The bench warrant was for --
10 it's a probation violation. She was out --

11 THE COURT: Y'all try to figure that out.
12 Mr. Forrest, how old are you?

13 THE DEFENDANT: Twenty-five, sir.

14 THE COURT: What is the highest grade you
15 finished?

16 THE DEFENDANT: Eleventh.

17 THE COURT: What kind of work do you do?

18 THE DEFENDANT: Unemployed.

19 THE COURT: What kind of work do you do when
20 you work?

21 THE DEFENDANT: Brick masonry.

22 THE COURT: Are you a helper?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you the muscle?

25 THE DEFENDANT: Try to be.

1 THE COURT: Are you married?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you got kids?

4 THE DEFENDANT: No, sir.

5 THE COURT: How many days have you been in
6 jail on this case?

7 THE DEFENDANT: Three.

8 THE COURT: Three days. In the last 24 hours,
9 have you had any drugs -- well, wait. Mr. Forrest, you
10 don't have a lawyer?

11 THE DEFENDANT: No, sir.

12 THE COURT: You understand you have a
13 constitutional right to a lawyer? If you can't afford
14 one, one will be appointed for you. Do you want a
15 lawyer?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. To each of you, in the last
18 24 hours have you had any drugs, alcohol, medication?
19 Ms. Bales?

20 THE DEFENDANT: No, sir.

21 THE COURT: Ms. Hoffman?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Forrest?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been treated for the

1 use of alcohol, drugs, mental illness or emotional
2 problems? Ms. Bales?

3 THE DEFENDANT: No, sir.

4 THE COURT: Ms. Hoffman?

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Forrest?

7 THE DEFENDANT: No, sir.

8 THE COURT: Ms. Bales, your case has not been
9 presented to the Lexington County Grand Jury. You have
10 an absolute right to require the State to present the
11 case to the grand jury where they have to prove more
12 probably than not that a crime was committed, and you
13 did it.

14 Do you want to give up your right to require
15 the State to present the case to the grand jury, which
16 would allow you to go forward today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Forrest, you've got a
19 negotiated sentence. If I don't like it, then I will
20 just throw it out, but I can't monkey with it. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Other than negotiations to any of
24 you, has anybody forced you, coerced you, threatened you
25 or promised you anything to get you to plead guilty?

1 Ms. Bales?

2 THE DEFENDANT: No, sir.

3 THE COURT: Ms. Hoffman?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Forrest?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you each understand you have an
8 absolute right to a trial by jury where you would be
9 presumed innocent unless and until the State could prove
10 you guilty beyond any reasonable doubt of each and every
11 element of each offense that you are charged with?

12 You have a right to confront and cross examine
13 the witnesses and any evidence put up against you by the
14 State. You have a right to compel in court all relevant
15 and competent evidence in your defense or you could
16 remain silent.

17 Your silence could not be held against you,
18 and you could never be compelled to incriminate
19 yourself. Do you understand all those rights?

20 Ms. Bales?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Ms. Hoffman?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Forrest?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You want to give up those rights
2 and plead guilty? Ms. Bales?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Ms. Hoffman?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Forrest?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you guilty, Ms. Bales?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Ms. Hoffman?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Forrest?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you totally satisfied with
15 your lawyer? Ms. Bales?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Ms. Hoffman?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Any complaints you want to make
20 with respect to these charges? Ms. Bales?

21 THE DEFENDANT: No, sir.

22 THE COURT: Ms. Hoffman?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Forrest?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you had ample opportunity to
2 review the evidence the State has against you?
3 Ms. Bales?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ms. Hoffman?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Forrest?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Listen carefully while the State
10 recites the facts they can prove at trial.

11 MS. AVINGER: Your Honor, thank you. May it
12 please the Court. In regards to Ms. Bales, Your Honor,
13 the incident date was July 7th of 2004 in Springdale,
14 which is here in Lexington County, at the B.B.&T. Bank.

15 The Defendant published as true a check in the
16 amount of \$380 on the account of Carl Lasigh (phonetic).
17 Your Honor, this was a forgery. She was not authorized
18 to receive that money. There is restitution due in the
19 amount of \$380.

20 THE COURT: Does she have a record?

21 MS. AVINGER: Yes, sir.

22 THE COURT: What is that?

23 MS. AVINGER: 1994, petty larceny; '99,
24 forgery; '99, fraudulent check; 2000, possession of
25 stolen property; 2001, forgery; 2001, financial

1 transaction card theft; 2003, financial transaction card
2 theft; 2004, false information to police and also
3 obtaining signature under false pretenses.

4 Your Honor, she is in jail on a bench warrant.
5 We would ask that the bench warrant be vacated. Also,
6 Your Honor, the incident date of this was July 7th of
7 2004, but she was not served with this warrant until
8 March of 2005, and I don't know why.

9 THE COURT: Probably she was on the run.

10 MS. AVINGER: Some of that time, Your Honor,
11 she was in the Department of Corrections because she got
12 time on the 2004 convictions.

13 THE COURT: What did she get? What did you
14 get on that?

15 MS. AVINGER: On the last one, Your Honor, she
16 got five years suspended to one year and then probation.
17 That was in 2004.

18 THE COURT: This isn't a violation? Are you
19 on probation now?

20 THE DEFENDANT: No, it was P.T.U.P.ed.

21 THE COURT: Is everything she told me true?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I will accept it. What else do
24 you want to tell me?

25 MR. BEACHAM: Your Honor, as the solicitor

1 said, she was incarcerated during the time. It would
2 have been nice if we could have gotten her and run them
3 concurrent at the time.

4 Ms. Bales had spent a significant period of
5 time, total service in jail. She has custody of her two
6 children, seven and nine years old. She said that she
7 is married.

8 I will say in trying to contact her husband, I
9 think there may not be that help for him, although she
10 does have family helping with her children while she has
11 been incarcerated.

12 She has the ability now to really support
13 herself and pay this restitution. She also wants to get
14 on with her life. She is, from what I understand,
15 probably going to move on from the marital situation she
16 is in, which probably had a lot to do with the
17 circumstances and the need for money.

18 In this case she had a prior -- she had
19 previously had a public defender who is no longer with
20 the Public Defender's Office. She informs me she was
21 under the impression that the charges were to be
22 dismissed or dropped.

23 So foolishly she missed an appearance and was
24 bench warranted. So she contacted me. I've tried to
25 help her through this. Your Honor, I don't believe --

1 and this case actually belonged to John Moorman in the
2 Solicitor's Office.

3 I don't want to mischaracterize anything he
4 said to me, but I do not believe he has an objection to
5 a probationary sentence. What we might ask, Your Honor,
6 is that if the Court finds that would be appropriate,
7 that she be allowed to P.T.U.P. that with the
8 restitution.

9 The amount was a minimal amount. I don't
10 think she is a danger to the community. I think she has
11 actually learned her lesson. She tells me that she does
12 not have a drug problem. I think she has a money
13 problem.

14 THE COURT: Okay. I will give her five years
15 provided upon the --

16 PROBATION OFFICER: Your Honor?

17 THE COURT: Is she on probation?

18 PROBATION OFFICER: She was on probation in
19 Richland County. She is in the absconded status. We
20 have a warrant for her or Richland County has a warrant
21 for her. We will notify them of her whereabouts. The
22 case is not P.T.U.P.ed.

23 MR. BEACHAM: When was that? When was the
24 warrant issued?

25 PROBATION OFFICER: July of '05.

1 THE COURT: It was not a P.T.U.P. case?

2 PROBATION OFFICER: It doesn't indicate
3 P.T.U.P. on the computer.

4 MR. BEACHAM: I can contact Richland County
5 and find out if that is the case. She seems to be under
6 the impression it was, in fact, a P.T.U.P. case.

7 PROBATION OFFICER: Well, even if it was
8 P.T.U.P., she has paid no money towards her restitution.
9 She has not paid a penny towards the restitution.

10 MR. BEACHAM: She indicates to me she has
11 receipts for that. I can double check on that. I can
12 call down there and find out.

13 THE COURT: Before I sentence her, I would
14 like to know a little more about it. If she is lying to
15 me, I will have to take that into consideration when I
16 make this sentence.

17 PROBATION OFFICER: We will go call Richland
18 County right now.

19 THE COURT: Why don't you have a seat over
20 there. Stay there until we know. Let's go on to
21 Ms. Hoffman.

22 MR. MOSES: Thank you, Your Honor. As to
23 Ms. Hoffman, she is here pleading to two of her charges
24 today. She is facing roughly four to five different
25 charges. Her troubles began on 7/14/2003 for burglary

1 second that she is pleading to today.

2 She, along with some codefendants, without
3 the permission or consent broke into a residence at
4 Cassidy Road in the Gaston area of the county. They
5 broke the window and took goods and items that were
6 valued at less than a thousand dollars. There was blood
7 on the window sill with their D.N.A. on it. She has a
8 written confession that she was inside the house and
9 broke inside the house unlawfully.

10 Then again on September 8, 2004, a fellow
11 named James Six entrusted his 1994 Ford Ranger to
12 Ms. Hoffman to go to the store and back. About three
13 days later he still had not received his truck.

14 They eventually found it. It was damaged, had
15 \$161 worth of restitution to it. We made efforts to
16 contact Mr. Six and could not find him to be here today,
17 but we have received a letter from him for the
18 restitution amount of 161.

19 Ms. Hoffman also has another burglary from
20 April of this year, burglary second, where she broke in
21 and stole chainsaws and other types of items from a
22 residence here in Lexington County.

23 We are not-prossing that burglary in exchange
24 for her former burglary. We are not-prossing another
25 breach of trust where she took another man's truck.

1 There is no restitution involved in that.

2 So she was looking at two burglaries and two
3 breach of trusts. We are not crossing two of them in
4 exchange for her plea today. Her record, starting back
5 in 1999, fraudulent check, two counts. Person who
6 places child at risk of harm, she was convicted of that,
7 got ten years suspended and two years probation.

8 Receiving stolen goods, false information,
9 grand larceny, financial transaction card fraud,
10 financial transaction card theft. I think that's what
11 she is on probation for now. She pled guilty when I was
12 her solicitor back in 2003.

13 The recommendation, Your Honor, is that she go
14 to prison, have a cap of five years in your discretion,
15 and get A.T.U. treatment. She has got a severe crack
16 problem.

17 THE COURT: All right.

18 MR. BEACHAM: Your Honor, she has a probation
19 violation. She was previously, in the prior case, she
20 was ordered as a condition of probation to go to drug
21 court.

22 Drug court is a fairly strenuous program. She
23 didn't have the support for the transportation, as well
24 as when the children -- she has grandkids that she helps
25 with. She found herself unable to do it. It was almost

1 like setting her up for failure.

2 She understands that she will be catching some
3 jail time today. What we would ask though, Your Honor,
4 is that Ms. Hoffman tells me when she was picked up on
5 the probation violation, she in fact was clean.

6 She had gotten herself clean. However, she
7 understands that -- and what the solicitor and I have
8 talked about is trying to get A.T.U. treatment for her
9 while she is inpatient. That way there is no question
10 about transportation or support.

11 I've been in contact with family members and
12 friends, and she has a support group there. I think
13 that there comes a time where drug court becomes onerous
14 for close family.

15 We would ask possibly -- I think a three-year
16 sentence, active sentence, would allow her to be in the
17 A.T.U. program while at S.C.D.C. and give her an
18 opportunity to get her life back together and help those
19 grandchildren.

20 THE COURT: What is hanging over her on
21 probation?

22 PROBATION OFFICER: You just want me to tell
23 you how much time is hanging over her?

24 THE COURT: Yes.

25 PROBATION OFFICER: She got five years on the

1 grand larceny, five years on the financial transaction
2 card fraud, five years on financial transaction card
3 theft, and ten years on the unlawful neglect of a child.

4 THE COURT: She is looking at ten then?

5 PROBATION OFFICER: Yes, sir.

6 THE COURT: No other violations or she did
7 have violations?

8 PROBATION OFFICER: Yes, sir. She failed
9 to -- she had bonded out from jail on a previous
10 warrant, and she did not report to the office. Again,
11 we have served multiple warrants on her. I'm not sure
12 why, Judge, but we have seven warrants that we have
13 served on her in this case. She continuously fails to
14 report after she bonds out.

15 MR. BEACHAM: Your Honor, I think she gave up
16 after she realized that she couldn't complete the drug
17 court. Instead of doing the right thing and trying to
18 work out an alternative plan, I think she just...

19 THE COURT: I will give her ten suspended on
20 five, ten years provided upon the service of five years,
21 probation for 30 months, recommend A.T.U., credit for
22 any time she is entitled to. On probation, substance
23 abuse counseling, random drug and alcohol testing.

24 On the other, five years current. This is
25 all current with the revocation for probation, which I

1 will revoke five and terminate those cases. Good luck
2 to you.

3 MR. MOSES: Thank you, Your Honor.

4 THE COURT: Now, tell me about Mr. Forrest.

5 MS. AVINGER: Your Honor, on Mr. Forrest, this
6 is actually another solicitor's file, but it's my
7 understanding that it was originally indicted for armed
8 robbery. He is pleading guilty to attempted armed
9 robbery.

10 Your Honor, it was from 1998, June 5th, at the
11 R&B Video on Platt Springs Road here in Lexington
12 County. Your Honor, someone there had been robbed, and
13 it's my understanding that Mr. Forrest was found
14 matching the description of one of the people that had
15 been involved in the robbery. He was found a short time
16 later in that same area.

17 Your Honor, due to the age of the case and
18 some witness problems with the case, Solicitor Graham
19 did decide to reduce this down to an attempted armed
20 robbery and negotiate a probationary sentence if you
21 would accept it.

22 There is \$451 restitution due to the victim.
23 We have filled out a restitution sheet. Your Honor,
24 it's my understanding also that Mr. Forrest had been
25 in the Department of Corrections at some point in the

1 past, and this should have been handled at that time,
2 but it was not. That is another reason for the
3 recommendation -- or negotiated sentence.

4 THE COURT: Is all that true?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is that your understanding of the
7 negotiations?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I guess you want that, don't you?

10 THE DEFENDANT: Yes, sir.

11 MS. AVINGER: We would also move to vacate the
12 bench warrant, a bench warrant that was issued on
13 Monday.

14 THE COURT: I will give him ten years,
15 provided upon the time he has been done, probation for
16 three years, restitution of \$451, 20 days public
17 service, substance abuse counseling, and random drug and
18 alcohol testing.

19 MS. AVINGER: Thank you, Your Honor.

20 PROBATION OFFICER: Your Honor, we still don't
21 know the status of Ms. Bales' case.

22 THE COURT: We will just set that one aside
23 until we know something.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 17th day of November, 2005.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 30, 2009

A handwritten signature in cursive script, reading "L. Coconut Pantsari", written over a horizontal line.

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of LEXINGTON

2014 APR 11 P 2:44

Joshua Lamar Forrest #274525

Full name and prison number (if any) of Applicant

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO.

ORIGINAL

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2014CP3201397

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court for Lexington County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 98-GS-32-2369
 - (b) _____

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.O.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 17, 2005; ten(10) years
- (b) _____
- (c) _____
-
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did not know of the right to appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denied the right to assistance of Counsel altogether
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant pled guilty without any assistance of Counsel
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) N/A
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? NO
 (c) your sentencing? NO
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. N/A
N/A
 ii. N/A
N/A
 iii. N/A
N/A
 (b) the proceedings at which each such attorney represented you:
 i. N/A
N/A
 ii. N/A
N/A
 iii. N/A
N/A

19. State clearly the relief you seek in filing this application:

That my conviction be vacated and dismissed with prejudice

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Joshua Lamar Forrest # 274525, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joshua Forrest

SWORN to and subscribed before me this
day of April, 2014.

1st

ORIGINAL

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

2014 APR 11 P 12:44
BETH A. CARRIGS
CLERK OF COURT
LEXINGTON, SC

FILED

2014CP3201397

ORIGINAL

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Joshua Lamar Forrest #274525, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joshua Forrest
Applicant

SWORN or affirmed to and subscribed before me this
1st day of April, 2019.

Tamara Connell
Notary Public

My Commission Expires: September 23, 2023

2014CP3201397

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON MO

2019 APR 11 P 2:45

FILED

Revised 3/2003

STATE OF SOUTH CAROLINA

County of LexingtonJoshua Lamar Forrest,
SedL No. 274525,

Applicant,

v.

State of South Carolina,

Respondent.

FILED

IN THE COURT OF COMMON PLEAS

Case No.:

2014 APR 11 P 12:45

ORIGINAL

BETHA CARRILLO MEMORANDUM OF LAW
CLERK OF COURT SUPPORT OF APPLICATION
LEXINGTON FOR POST-CONVICTION
RELIEF

2014CP3201397

Come now, the applicant Joshua Lamar Forrest #274525 presents the Memorandum of Law in Support of his Application for Post-Conviction Relief (PCR) and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Lexington County Grand Jury during the JULY term of General Sessions Court for armed robbery (98-GS-32-~~536~~A). On November 17, 2005, he went to trial before the Honorable Judge EDWARD MILLER. The applicant proceeded pro se, and the State was represented by ANDELA G. HENDER of the Lexington County Solicitor's office. The applicant pled guilty to a lesser included charge of attempted armed robbery, and the Judge sentenced him to ten (10) years suspended upon the service of three (3) years probation plus the credit for service of three (3) days, and \$457 restitution. No appeal was filed on applicant's behalf.

ARGUMENT

The applicant contends that his 2005 uncounseled attempted arm robbery conviction has been used to adversely affect his current sentence.

The applicant submits that on December 4, 2008, he was convicted of murder in Aikens County, and the Solicitor used his prior 11-17-05 uncounseled attempted armed robbery conviction to enhance his current murder conviction to a life sentence without parole under S.C. Code § 17-25-45. In McDuffie v. State, 277 S.E.2d 596 (S.C. 1981), our Supreme Court held that "where an applicant for PCR alleges in his application that the results of his prior conviction still persists; even though the sentence has been fully served, he is entitled to an evidentiary hearing to determine whether or not he has been prejudiced." See also, Jackson v. State, 489 S.E.2d 915 (S.C. 1997).

Likewise, in United States v. Morgan, 346 U.S. 502, 74 S.Ct. 247, 253 (1954), the U.S. Supreme Court held that "although the term has been served, the results of the conviction may persist, subsequent convictions may carry heavier penalties As the power to remedy an invalid sentence exists, we think an (applicant) is entitled to an opportunity to attempt to show that his prior conviction was invalid".

Accordingly, the applicant contends that during his guilty plea to his "2005 attempted armed robbery" charge the record shows that he was not advised of, nor provided, the assistance of Counsel; the record will further show that he did not knowingly, voluntarily, and intelligently waive his right to Counsel or was informed of the danger of proceeding pro se by the Court. See Sentencing Sheet attached hereto as Exhibit A.

To establish a valid waiver of Counsel, the accused must be advised of the right to Counsel and adequately warned of the danger of self-representation; in the absence of a specific inquiry by the lower Court addressing the dangers and disadvantages of proceeding pro se, the reviewing Court must look to the record to determine whether the applicant had sufficient background or was apprised of his rights by some other source. The applicant submits that in his case, the record is silent as to any specific inquiry by the trial Court in his prior conviction. See Stevenson v. State, 522 S.E.2d 343 (S.C. 1999).

In addressing such a violation of that complained of in applicant's case, the U.S. Supreme Court has held that "in certain Sixth Amendment contexts, prejudice is presumed, actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice."

Strickland v. Washington, 104 S.Ct. 2052, 2067 (1984), citing United States v. Cronk, 466 U.S. at 659, n. 25, 104 S.Ct. at 2046, and note 25. In conjunction, our Supreme Court has held that when counsel is denied at critical stage of defendant's trial, prejudice will be presumed and harmless error analysis is precluded. See McKnight v. State, 465 S.E.2d 352 (S.C. 1995).

CONCLUSION

WHEREFORE, for the foregoing reason, the Honorable Court should grant an evidentiary hearing to determine whether applicant has been prejudiced by the State's use of his prior conviction.

Respectfully Submitted,

By: Joshua Forrest
 Joshua Lamar Forrest, 274525
 Perry Correctional Inst.
 430 Oaklawn Road - Q4A/107
 Pelzer, S.C. 29669

This 1 day of April, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	2014-CP-32-01397
	)	
Joshua Lamar Forrest,	)	
S.C.D.C. No. 274525,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed by Joshua Lamar Forrest (Applicant) on April 11, 2014. Respondent would show this Court:

I.

Applicant is confined at the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted in Lexington County for two (2) counts of Armed Robbery and one count of Disorderly Conduct. Applicant proceeded pro se at his guilty plea on November 17, 2005, at which time he pled guilty to Attempted Armed Robbery (1998-GS-32-2369). The Honorable Edward Miller sentenced him to ten (10) years imprisonment, suspended upon time served to three (3) years' probation. Applicant was to be supervised in Aiken County while on probation.

Applicant signed a Standard Conditions of Probation form on November 17, 2005, indicating that the conditions had been explained to him and that he agreed to them. A probation arrest warrant was issued on December 22, 2005, listing several alleged violations. Among the listed violations were failure to "refrain from entering any establishment whose primary business is the sale and drinking of alcoholic beverages" and "a preponderance of evidence to believe that

[Applicant] did commit the offenses of Murder and Possession of a Weapon during a Violent Crime." The warrant was served by Applicant's probation agent on January 9, 2006. A sentencing sheet dated February 13, 2006, reflects that the Honorable Doyet A. Early ordered that the probation violation case "be heard before General Sessions Court during the Murder and Possession of Weapon during Violent Crime trial." Following a jury trial on the charges of Murder and Possession of a Weapon during Violent Crime which resulted in a hung jury, Applicant appeared before the Honorable Doyet A. Early, III, on December 7, 2006, for a probation revocation hearing. Applicant's trial counsel, Sherri Stoney, Esquire, represented him. Judge Early revoked Applicant's suspended sentence in full. On June 24, 2009, Applicant was found guilty of both charges following a jury trial and sentenced to life imprisonment.

2009-CP-02-1238

On August 17, 2007, Applicant filed an application for post-conviction relief in Lexington County (2007-CP-32-2906). Pursuant to an order filed May 22, 2009, venue was changed to Aiken County. In his application, Applicant alleges that he is being held unlawfully for the following reasons:

1. "Violation of Due Process of Law"
 - a. "Never violation Probation Conditional Order"
2. "(14) Amendment to the United States Constitution

Applicant filed an amended Application July 20, 2009 (2009-CP-02-1238), asserting the following grounds for relief:

1. The court lacked subject matter jurisdiction to conduct the probation hearing.
2. Ineffective assistance of counsel at probation revocation hearing.
3. "That neither the Applicant nor his attorney was served with a warrant for a probation violation as is required under S.C. Code Section 24-21-450 and the Due Process Clauses of the Constitutions of the United States and the State of South Carolina. Further, nor was the Applicant or his attorney served with a citation and attached affidavit in lieu of the required warrant."
4. Failed to advise Applicant of right to appeal or file appeal.

An evidentiary hearing was held on July 14, 2010, before the Honorable W. Jeffrey Young in Aiken County. Applicant was represented by Kenneth Hanson, Esquire. At the hearing, Applicant testified on his own behalf. Also testifying were Sherry Stoney, Esquire, and probation agents Marie Boulton and Anthony White. On October 8, 2010, the court filed an Order of Dismissal, denying and dismissing Applicant's application with prejudice.

On February 11, 2011, Applicant filed a Notice of Appeal. On or about August 12, 2011, Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. On or about December 19, 2011, Respondent filed its Return. By Order dated July 24, 2012, the case was transferred to the South Carolina Court of Appeals. By Order dated September 4, 2013, Certiorari was granted by the Court of Appeals. On August 1, 2014 the Court of Appeals issued an Order taking the matter under advisement and requesting the parties submit proposed orders. At the time of this Return, this matter is still pending.

II.

In his second and current application, Applicant contends he is being held unlawfully for the following reasons:

1. "Denied the right to assistance of counsel altogether."
 - a. "Applicant pled guilty without any assistance of counsel."

For the purposes of this Return, Respondent incorporates the Lexington County Clerk of Court records and Applicant's prior PCR records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

This Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised...in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. 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. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

In this case, Applicant could have raised the new grounds for relief in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

Respondent submits this Application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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). Applicant pled guilty to the offense he challenges on November 17, 2005. He was therefore required to file his application on or before November 17, 2006. This Application was filed on April 11, 2014, which was over seven 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) (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, Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR application and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

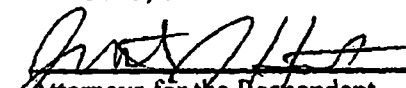
JOHN W. McINTOSH
Chief Deputy Attorney General

SUZANNE H. WHITE
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
December 31, 2014

ORIGINAL

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)

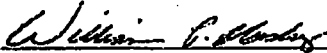
Joshua Lamar Forrest, 2016 MAR -8 A 8:59
)
 Applicant, BEN A. CARRIGG
) CLERK OF COURT
 -vs-) LEXINGTON, SC
) SCHEDULING ORDER
)
 State of South Carolina, Case Number 2014-CP-32-01397
)
)
 Respondent.)

As a result of a status conference conducted today, the following information was obtained and directives given:

- 1) The applicant was sentenced in November 2005. He received a probationary sentence for attempted armed robbery. His plea was entered without an attorney. He obtained a subsequent murder conviction for which he was sentenced to life imprisonment.
- 2) The State has submitted a proposed conditional order of dismissal which has not been entered.
- 3) The case is continued to allow the court to consider the conditional order of dismissal.

AND IT IS SO ORDERED.

Date: March 7, 2016


 William P. Keesley
 Chief Judge for Administrative Purposes

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201397

Joshua Lamar Forrest
#274525

State of South Carolina

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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.

Circuit Court Judge

Judge Code

3/8/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on March 8, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

**David Kellum Allen The Allen Law Firm, P.A. PO Box 3241
West Columbia, SC 29171**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211**

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - 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)
) COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)

Joshua Lamar Forrest ,)
)
 Plaintiff,)
 v.) Case No. 14-CP-23-1397
)
 State of South Carolina ,)
)
 Defendant.)

TRANSCRIPT OF PCR HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held April 21, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina;; attended by counsel as follows:

APPEARANCES:

David Allen, Esq.
 (Information Not Provided)
 Appearing for Applicant

Johnny James, Assistant AG
 Johanna C. Valenzuela, Senior Assistant AG
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

2

(APPLICANT PRESENT)

THE COURT: All right. I'll be glad to hear from you.

MR. JAMES: Thank you, Your Honor. If it may please the Court, we're here today to consider the State's motion to dismiss in the matter of Joshua Lamar Forrest versus State of South Carolina. That is docket number 2014-CP-32-1397.

The applicant, Mr. Forrest, is present today in the custody of South Carolina Department of Corrections. Also present with him is his counsel, David Allen.

There is a moderately substantial procedural history the State is prepared to go through. But it is necessary for a relatively simple Motion.

THE COURT: Yes, if you will.

MR. JAMES: This proceeding pertains to a July 1998 indictment for armed robbery. Mr. Forrest proceeded *pro se* and pled guilty on November 17th, 2015 to the negotiated charge of attempted

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

3

1 armed robbery. The Honorable Judge Miller
2 sentenced him to ten years incarceration
3 suspended on three days time served and
4 three years probation. Mr. Forrest has
5 never directly appealed that sentence.

6 He was to be supervised at Aiken
7 County while on probation and he signed a
8 standard conditions of probation form
9 indicating that he understood the
10 conditions that had been explained to him
11 and that he agreed to them.

12 Mr. Forrest was subsequently
13 arrested on December 5th, 2005 for the
14 shooting/murder of Mario T. Radish, which
15 occurred on December 4th. A probation
16 arrest warrant was issued for Mr. Forrest
17 on December 22nd, 2005 for that charge, as
18 well as on the belief, quote, "that he
19 failed to refrain from entering any
20 establishment whose primary business was
21 the sale and drinking of alcoholic
22 beverages", end quote.

23 The warrant was served on
24 January 9th, 2006.

25 On February 13th, 2006 the

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

4

1 Honorable Judge Early ordered that the
2 probation violation be heard during Mr.
3 Forrest's trial for murder. That first
4 trial ended in a hung jury, after which
5 Mr. Forrest appeared on December 7th, 2006
6 for his probation violation hearing. He
7 was represented by his murder trial
8 attorney, Ms. Sherry Stoney, Esquire.
9 Judge Early, on the basis of that alcohol
10 violation revoked probation in full.

11 And later on June 24th, 2009,
12 Mr. Forrest was found guilty of murder and
13 possession of a weapon during a violent
14 crime. Based on the two strikes statute,
15 keeping in mind he had attempted armed
16 robbery to which he pled, he was sentenced
17 to life without parole.

18 Mr. Forrest did pursue a direct
19 appeal of the murder conviction. And that
20 conviction was affirmed upon an *Anders*
21 brief.

22 To take a step back a bit, Mr.
23 Forrest submitted his first application
24 relating to the attempted armed robbery on
25 August 17, 2007 after a transfer of venue

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

5

1 from Lexington to Aiken County.

2 THE COURT: What day was that
3 again?

4 MR. JAMES: August 17, 2007.

5 Venue was transferred from Lexington to
6 Aiken County after which he submitted an
7 amendment to that application on, 2009,
8 alleging additional grounds for relief
9 arising out of the probation revocation.

10 He proceeded to a hearing before
11 the Honorable W. Jeffrey Young in Aiken
12 County on July 14th, 2010 and was
13 represented by counsel, Kenneth Hanson.
14 Judge Young denied and dismissed that
15 application with prejudice on October 8th,
16 2010.

17 Mr. Forrest pursued an appeal
18 of that denial by the PCR court. And the
19 Court of Appeals, after review of the
20 briefs submitted, affirmed Judge Young's
21 dismissal by an unpublished Opinion filed
22 January 28th, 2015.

23 Concurrently, Mr. Forrest has
24 also pursued post-conviction relief
25 relating to his murder conviction. His

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

6

1 application in that matter has been
2 denied, dismissed and the appeal from that
3 dismissal remains pending.

4 My knowledge right now, the
5 state of that case is that the State's
6 return in that is due on May 5th.

7 That brings us back to the
8 current application. The current
9 application before the Court was filed
10 April 11th, 2014, some three thousand
11 sixty-seven days (3,067) after his pro se
12 guilty plea, alleging that he was denied
13 the right of assistance of counsel
14 altogether. And he requests relief,
15 quote, that "my conviction be vacated and
16 dismissed with prejudice." Unquote.

17 As such, the State filed with
18 its return a Motion to dismiss on two
19 grounds:

20 First, that three thousand
21 sixty-seven days is well in excess of the
22 one-year statute of limitation described
23 in Section 17-27-45.

24 Second, that this being his
25 second PCR application arising out of the

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

7

1 attempted armed robbery conviction, it is
2 successive and, therefore, barred under
3 section 17-27-90.

4 Mr. Forrest has offered no
5 reason why the grounds he alleges in the
6 present application could not have been
7 raised previously. And indeed that is
8 because there is no sufficient reason,
9 Your Honor.

10 Under Ace v. State, that failure
11 to explain why it couldn't have been
12 raised before obviates any need for
13 further inquiry by the court and dismissal
14 is appropriate.

15 The State respectfully submits
16 that the application should be dismissed
17 consistent with our Motion.

18 THE COURT: Okay. Mr. Allen?

19 MR. ALLEN: Thank you, Your
20 Honor. May it please the Court. As I
21 state in our return, the successive
22 grounds I think fails under the statute.
23 It's basically the venue statute, Your
24 Honor. And it's 17-27-40, which requires
25 that a PCR proceeding be filed in the

Joshua Lamar Forrest v State of South Carolina
Case No. 14-P-32-1397
PCR Hearing of April 21, 2016
Before The Honorable Perry H. Gravely

8

1 county in which the conviction took place.
2 It says the court in which the conviction
3 took place.

4 But since his probation
5 revocation was in Aiken, Aiken could not
6 hear his Lexington charges. So,
7 therefore, 17-27-90 which is, of course,
8 the successive application statute
9 requires that all grounds for relief
10 available to the applicant be raised in
11 his first application. Well, that relief
12 was not available to the applicant because
13 it was not a proper venue to bring that
14 relief. So that's my first argument to
15 their successive application motion to
16 dismiss.

17 As to the statute of limita-
18 tions, I've attached a two-page case to my
19 two-page return, Your Honor. Basically,
20 the *Wilson* case calls for the statute of
21 limitations to not bar a PCR when the
22 applicant did not have a full bite of the
23 apple. And in that case, the full bite of
24 the apple was not had because the
25 applicant did not have an appeal of his

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1 trial-level conviction. Assuming all the
2 facts in the light most favorable to my
3 client, which at this stage in the game we
4 have to do, he had no lawyer for his
5 guilty plea. I believe, for what it's
6 worth, that he will be successful if he
7 reaches the merits of his PCR because the
8 *Faretta* warnings were not properly given.
9 So, assuming that, he was not properly
10 advised of his right to appeal. He has,
11 therefore, had no appeal. He has not had
12 his one bite at the apple and is very
13 close to being on all fours with the
14 *Wilson* case.

15 THE COURT: All right.

16 MR. JAMES: Thank you, Your
17 Honor. Starting with the statute of
18 limitations, Applicant has thus far,
19 unless he is doing so now, not asked for
20 a delayed appeal. He has asked for his
21 prior conviction to be vacated and be
22 dismissed with prejudice.

23 And even if he is now asking for
24 a belated appeal, Mr. Forrest has
25 certainly been aware of his right to

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1 appeal at least since his July 16, 2009
2 amendment to his first application for
3 PCR. In that amendment, Mr. Forrest
4 demanded a belated appeal to his probation
5 revocation proceeding. So he knew of the
6 right to appeal. He demanded an appeal on
7 one circumstance and he hasn't really
8 given a sufficient reason why he couldn't
9 have also pursued the present claims at
10 that time, which I will discuss
11 momentarily.

12 Furthermore, Your Honor, the
13 courts have already considered the
14 relationship between *Faretta* and the
15 statute of limitations. The Court
16 directly considered how they work together
17 in the case of *Dearyberry v. State*. In
18 *Dearyberry*, the applicant demonstrated
19 particular facts to show that he did not
20 know he'd been operating without counsel
21 until well after the statute had run. And
22 then upon learning of that fact,
23 immediately applied within the month.

24 Mr. Dearyberry and the court
25 both looked at subsection (c) of section

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1 17-27-45, which provides for a year from
2 the time of discovery of material facts
3 not previously presented and heard. Mr.
4 Dearyberry realized what happened, that
5 his divorce attorney had not at all
6 represented him in a criminal matter as he
7 had believed and promptly applied for
8 relief.

9 The case here is very different.
10 The latest possible date that Mr. Forrest
11 can claim to have had any epiphany
12 regarding his right to an appeal is the
13 date on which he asserted he'd been denied
14 his right to an appeal in his July 2009
15 amendments. And that was nearly seven
16 years ago, Your Honor; and nearly five
17 years before the current application was
18 filed.

19 Now, the window for relief
20 through *Dearyberry* does not stay open
21 eternally. It did not say that, 'well,
22 *Faretta* claims now fit perfectly under
23 *Wilson*.' And footnote for that case makes
24 that abundantly clear citing favorably a
25 case out of the Supreme of Arkansas that

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1 says, quote, "the fact that petitioner is
2 proceeding pro se does not in itself
3 constitute good cause for failure to
4 conform to the prevailing rules of
5 procedure." End quote. "

6 So a *Faretta* matter does not
7 enter under the suspension of the statute
8 of limitations under *Wilson, Austin* and
9 Odom and its progeny.

10 There must be an end to the
11 adjudication of criminal matters. As I
12 read *Dearyberry*, the window is open for a
13 year from the moment an individual
14 realizes it exists. And consistent with
15 that reading Mr. Forrest cannot now come
16 to the court many years later and demand
17 it be reopened. The statute of
18 limitations has run. It has run again and
19 this motion should be dismissed for
20 violating the statute of limitations.

21 As to the successive issue, the
22 PCR application that was considered in
23 Aiken was, as I mentioned before,
24 originally filed in Lexington County. It
25 was then moved over in venue. The change

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1 in venue did not deprive it of by-and-by
2 the rules of statute.

3 THE COURT: Let me ask you
4 this. When it was filed in Lexington,
5 what was the basis? I'm a little bit
6 confused on that. What was the -- when
7 the PCR application was filed in
8 Lexington, what was the ---

9 MR. JAMES: I believe the
10 grounds for the application in Lexington
11 was, quote, "violation of due process of
12 law" and that he had never violated the
13 probation conditional order. And then it
14 was -- that was a *pro se* application. It
15 was expanded on substantially when they
16 filed their amendments after venue had
17 moved over to Aiken County.

18 THE COURT: All right. So it
19 referenced -- it was the probation though
20 that he got a result of this sentence ---

21 MR. JAMES: Correct, sir.

22 THE COURT: --- that we're
23 talking about here. The 2005 sentence; is
24 that right?

25 MR. JAMES: Yeah.

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1 MR. ALLEN: Yes, Your Honor.

2 THE COURT: All right.

3 Anything further, Mr. Allen?

4 MR. ALLEN: Your Honor, if I
5 may respond very briefly. As to that
6 application you were just inquiring about
7 that was filed in Lexington and
8 transferred to Aiken, on the first page of
9 that -- I've got one copy I'll be glad to
10 give to Your Honor -- the fourth paragraph
11 asks -- it's kind of a question and
12 answer. It says "the indictment number or
13 numbers upon which and the offenses for
14 which sentence was imposed." And he
15 references the Lexington County underlying
16 plea, the 1998 indictment number. So he
17 is seeking relief from that. He even
18 names attempted armed robbery as the
19 charge from which he's seeking relief.

20 But the case gets transferred to
21 Aiken County. It somehow transforms into
22 only about the probation revocation
23 hearing. And I would just -- I can just
24 go back to that statute, 17-27-40, which
25 requires that if you're requesting relief

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1 from an underlying charge, it's got to be
2 in the county for where that charge was.

3 THE COURT: Well, but don't you
4 have a problem if you file -- say that the
5 -- when he filed his PCR application -- in
6 2009. Am I right?

7 MR. JAMES: (Affirmative nod).

8 THE COURT: Okay. In whatever
9 year it was, saying 'I'm filing a PCR
10 because my probation revocation was not
11 proper.' I mean, I know that is not
12 exactly right. But isn't it another
13 grounds that he could have raised at that
14 time: 'In addition, my plea, which I got
15 probation, was not proper because I didn't
16 -- I didn't have an attorney and I didn't
17 know that I had a right to appeal.'

18 MR. ALLEN: I would think so,
19 Your Honor, but my understanding of the
20 attorney general's position is that it's
21 got to be -- if it's a Lexington County
22 charge or a probation revocation that
23 you're challenging, it's got to be brought
24 here. He had Aiken County probation
25 revocation and a Lexington County

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1 underlying plea. So I just think the
2 statute makes it clear that he's got to
3 file two in that situation.

4 THE COURT: Well, he originally
5 filed it in Lexington.

6 MR. ALLEN: Yes, sir.

7 THE COURT: And I think -- I
8 think we've got an issue with it being
9 successive and the statute of limitations.
10 I think -- so I think based on everything
11 I've heard, I'm going to grant the State's
12 Motion.

13 MR. ALLEN: Okay.

14 THE COURT: And Mr. Forrest,
15 you do have a right to appeal this. Do
16 you understand that?

17 APPLICANT: Yes, sir.

18 THE COURT: Okay.

19 MR. ALLEN: Thank you, Judge.

20 MR. JAMES: Thank you, Your
21 Honor.

22 THE COURT: And it's thirty
23 days from the day that the order is
24 issued.

25 MR. JAMES: And if may please

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1 the Court, State does have prepared a
2 final order of dismissal for the Court's
3 consideration substantially in the
4 language of a conditional order.

5 THE COURT: All right.

6 MR. JAMES: May I approach?

7 THE COURT: Yes, sir.

8 MR. JAMES: And, Your Honor?

9 THE COURT: Yes, sir?

10 MR. JAMES: I apologize, Your
11 Honor, I did not take into consideration
12 when drafting this for the court an
13 argument that was advanced by esteemed
14 opposing counsel to consider his juris-
15 diction argument based on the change of
16 venue. May it please the Court, I can
17 make a modification of that and submit it
18 to that and to opposing counsel by email
19 this afternoon?

20 THE COURT: All right. Thank
21 you. Well, I'll just hold this one then.

22 MR. JAMES: All right.

23 THE COURT: All right. Thank
24 you.

25 MR. ALLEN: Thank you, sir.

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MR. JAMES: Thank you.

THE COURT: Good luck to you, Mr.
Forrest.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on April 21,
2016, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.

W. L. Garrison

Deborah Garrison

Greenville, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

) ELEVENTH JUDICIAL CIRCUIT

Joshua Lamar Forrest,
S.C.D.C. No. 274525,

) 2014-CP-32-01397

v.

FINAL ORDER OF DISMISSAL

State of South Carolina

Defendant.

FILED
JUN 1 P 2:13
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of an application for post-conviction relief filed by Joshua Lamar Forrest (Applicant) on April 11, 2014 ("the Application"). Respondent made its Return and Motion to Dismiss on December 31, 2014, requesting the application be summarily dismissed as untimely filed and successive in nature. Respondent concurrently filed a Conditional Order of Dismissal upon the same grounds. By Order dated March 7, 2016, the Honorable William P. Keesley continued the matter in order to consider the Conditional Order of Dismissal. A hearing into Respondent's motion was convened before this Court on April 21, 2016. Applicant was present at the hearing and was represented by David K. Allen, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

After thorough consideration of the record before this Court and arguments offered at the hearing of April 21, 2016, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined at the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted in Lexington County for two (2) counts of Armed Robbery and one count of Disorderly Conduct. Applicant

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proceeded *pro se* at his guilty plea on November 17, 2005, at which time he pled guilty to Attempted Armed Robbery (1998-GS-32-2369). The Honorable Edward Miller sentenced him to ten (10) years imprisonment, suspended upon time served to three (3) years' probation. Applicant was to be supervised in Aiken County while on probation.

Applicant signed a Standard Conditions of Probation form on November 17, 2005, indicating that the conditions had been explained to him and that he agreed to them. A probation arrest warrant was issued on December 22, 2005, listing several alleged violations. Among the listed violations were failure to "refrain from entering any establishment whose primary business is the sale and drinking of alcoholic beverages" and "a preponderance of evidence to believe that [Applicant] did commit the offenses of Murder and Possession of a Weapon during a Violent Crime." The warrant was served by Applicant's probation agent on January 9, 2006. A sentencing sheet dated February 13, 2006, reflects that the Honorable Doyet A. Early, III, ordered that the probation violation case "be heard before General Sessions Court during the Murder and Possession of Weapon during Violent Crime trial." Following a jury trial on the charges of Murder and Possession of a Weapon during a Violent Crime which resulted in a hung jury, Applicant appeared before Judge Early on December 7, 2006, for a probation revocation hearing. Applicant's trial counsel, Sherri Stoney, Esquire, represented him. Judge Early revoked Applicant's suspended sentence in full. On June 24, 2009, Applicant was found guilty of Murder and Possession of a Weapon during a Violent Crime following a jury trial and sentenced to life imprisonment pursuant to S.C. Code Ann. § 17-25-45.

2007-CP-32-2906; 2009-CP-02-1238

On August 17, 2007, Applicant filed an application for post-conviction relief in Lexington County (2007-CP-32-2906). Pursuant to an order filed May 22, 2009, venue was

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changed to Aiken County. In his application, Applicant alleged that he was being held unlawfully for the following reasons (errors as preserved):

1. "Violation of Due Process of Law"
 - a. "Never violation Probation Conditional Order"
2. "(14) Amendment to the United States Constitution"

Applicant filed an amended Application July 20, 2009 (2009-CP-02-1238), asserting the following grounds for relief (errors as preserved):

1. "The court lacked subject matter jurisdiction to conduct the probation hearing."
2. "Ineffective assistance of counsel at probation revocation hearing."
3. "That neither the Applicant nor his attorney was served with a warrant for a probation violation as is required under S.C. Code Section 24-21-450 and the Due Process Clauses of the Constitutions of the United States and the State of South Carolina. Further, nor was the Applicant or his attorney served with a citation and attached affidavit in lieu of the required warrant."
4. "Failed to advise Applicant of right to appeal or file appeal."

An evidentiary hearing was held on July 14, 2010, before the Honorable W. Jeffrey Young in Aiken County. Applicant was represented by Kenneth Hanson, Esquire. At the hearing, Applicant testified on his own behalf. Applicant's counsel at the probation hearing, Sherry Stoney, Esquire, and probation agents Marie Boulton and Anthony White also testified. On October 8, 2010, the court filed an Order of Dismissal, denying and dismissing Applicant's application with prejudice.

On February 11, 2011, Applicant filed a Notice of Appeal. On or about August 12, 2011, Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. On or about December 19, 2011, Respondent filed its Return. By Order dated July 24, 2012, the case was transferred to the South Carolina Court of Appeals, which granted Certiorari by Order dated September 4, 2013. In an unpublished opinion filed January 28, 2015, the Court of Appeals

affirmed the ruling of the PCR court. Forrest v. State, 2015-UP-052 (S.C. Ct. App. filed January 28, 2015). The Remittitur issued February 18, 2015.

CURRENT APPLICATION

In his second and current application, Applicant contends he is being held unlawfully for the following reasons (errors as preserved):

1. "Denied the right to assistance of counsel altogether."
 - a. "Applicant pled guilty without any assistance of counsel."

Respondent incorporated the Lexington County Clerk of Court records, Applicant's prior PCR records, and the South Carolina Department of Corrections' records.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the Application must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (1985) 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 the 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, 309 S.C. 157, 420 S.E.2d 834 (1992).

Applicant contends that the Court's disfavor for successive applications should not bar his present claims because, as his prior PCR action was ultimately adjudicated in Aiken County, where his probation revocation took place, the Court in his prior action lacked jurisdiction under the PCR statute to rule upon claims arising out of the underlying conviction, which took place in Lexington County.

This Court is unpersuaded by Applicant's argument. Under S.C. Code Ann. § 17-27-40, "[a] proceeding is commenced by filing an application verified by the applicant with the clerk of the court in which the conviction took place." Applicant's first PCR was originally filed in Lexington County, where the underlying conviction took place, and his claims for relief could have been submitted in that original application. That his prior action exclusively attacked the probation revocation proceeding in Aiken County and was changed in venue accordingly does not defeat the fact that Applicant could have raised his present claims in his original filing, did not do so, and further declined to do so in any subsequent amendment or supplemental filing.

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, 420 S.E.2d 834 (1992).

PCR

Statute of Limitations

The Court further finds that the Application must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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). Applicant pled guilty to the offense he challenges on November 17, 2005. He was therefore required to file his application on or before November 17, 2006. This Application was filed on April 11, 2014, which was over seven years after the statutory filing period had expired.

Applicant alleges that his decision to proceed *pro se* and plead guilty was not knowing and voluntary, he never received an appeal, he was denied his right of appellate review and, the statute of limitations does not apply to his Application under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) and Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002)¹. Indeed, "Austin appeals do not have to be filed within the one year statute of limitations because they are belated appeals intended to correct unjust procedural defects." Wilson at 218, 559 S.E.2d at 582.

However, the case at hand is distinct from Wilson. In Wilson, the Court suspended the statute of limitations because "Austin's policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of

¹ Applicant, in his Return to State's Motion to Dismiss also claims that Applicant never received a PCR hearing. However, as explored above, Applicant did file a PCR application in Lexington County based on the same underlying indictment as is now at issue and did thereafter receive a full evidentiary hearing after a change of venue.

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the one year statute of limitations.” Id. at 218, 559 S.E.2d at 583. Whereas Wilson had received neither a direct appeal nor a PCR application due to ineffective assistance of counsel, Applicant’s lack of direct appeal was not due to ineffective counsel, but due to his own inaction. Applicant has enjoyed a full evidentiary hearing on the merits of his first application for post-conviction relief and an appeal therefrom. Austin’s policy, protecting the right to a direct appeal from the decision of a PCR court, as contemplated by Wilson, has not been frustrated at all.

The State brings the Court’s attention to Dearybury v. State, 367 S.C. 34, 625 S.E.2d 212 (2006). There the Court considered the relationship between the one-year statute of limitations from the time of discovery of material facts², the request for a belated appeal, and the requirement that an individual’s decision to proceed *pro se* must be knowing and voluntary under Faretta v. California, 422 U.S. 806 (1975). In Dearybury, the applicant filed his application within a month of discovering that his divorce attorney had not at all represented him on his criminal conviction and that he had been acting *pro se*. “If Petitioner did not knowingly and voluntarily waive his right to counsel, he is presumably entitled to a belated direct appeal.” Dearybury at 40, 625 S.E.2d at 215. However, the Court further noted that the “fact that petitioner [was] proceeding *pro se* does not in itself constitute good cause for failure to conform to the prevailing rules of procedure.” Id. at n.4 (citing Walker v. State, 676 S.W.2d 460 (Ark. 1984)).

Applicant has failed so entirely to conform to the rules of procedure under the PCR statute that the Court need not consider the merits of his Faretta claim. The statute of limitations ran, at the earliest, in November 2006. When Applicant amended in 2009 his first application for post-conviction relief, he demanded a belated appeal from his probation revocation proceeding but did not seek a belated appeal from his underlying guilty plea. Applicant did not file the

² S.C. Code Ann. § 17-27-45(c)

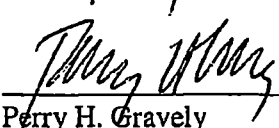
present application until April 11, 2014, and still failed then to demand a belated appeal, but instead requested "[t]hat [his] conviction be vacated and dismissed with prejudice." In neither his Return to State's Motion to Dismiss, nor in arguments at the hearing, does Applicant indicate that he now wishes to pursue relief different from that which he requested in his original application. Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968); *see also* Grand v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964); White v. State, 263 S.C. 110, 119, 208 S.E.2d 35, 39 (1974) (No authority for the court to grant a full right of appeal, let alone new trial, upon ground that applicant did not knowingly and voluntarily waive right to appeal from conviction and sentence). Applicant cannot avail himself of an exception to the statute of limitations that only exists to provide a form of relief he does not request and in which he expresses no interest. The suspension of the statute of limitations under Austin and its progeny is not readily interchangeable with demands for broader relief.

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." The statute of limitations has run and run again. As Applicant failed to file within the time mandated by the Post-Conviction Procedure Act, further failed to request relief for which the statute of limitations may be suspended, and Respondent so moved, the Application must be summarily dismissed.

CONCLUSION

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the Application is hereby denied and dismissed with prejudice. This Court hereby advises 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 9th day of May, 2016.



Perry H. Gravely
Presiding Judge

Pickens, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201397

Joshua Lamar Forrest
#274525

State of South Carolina

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.

Circuit Court Judge

Judge Code

6/1/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 2nd of June 2016, to attorneys of record or to parties (when appearing pro se) as follows:

David Kellum Allen
The Allen Law Firm, P.A.
PO Box 3241 West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

Johanna Catalina Valenzuela
PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - 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 LEXINGTON)

Joshua Lamar Forrest,
S.C.D.C. No. 274525,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Docket No.: 2014-CP-32-013

MOTION TO ALTER/AMEND
JUDGMENT

ORIGINAL

JUN 24 A 11:30
FILED
CLERK OF COURT
LEXINGTON, SC

Counsel for the Applicant received the Order of the Court Granting Respondent's Motion to Dismiss the Applicant's claims for Post-Conviction Relief on June 6, 2016. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e), the Applicant hereby respectfully requests the Court Alter or Amend the current Judgement based upon the following arguments:

SUCCESSIVENESS

South Carolina Code Section 17-27-40 holds, "A proceeding is commenced by filing an application verified by the applicant **with the clerk of the court in which the conviction took place**" (emphasis added). Applicant's first PCR was adjudicated in Aiken county, challenging a probation revocation held in Aiken County. The conviction Applicant challenges with this PCR is from a Lexington County guilty plea. Therefore, Applicant could not have challenged his Lexington guilty plea in the same application by which he challenged his Aiken probation revocation, as venue was not proper.

STATUTE OF LIMITATIONS

Wilson v. State, 348 S.C. 215; 218 (2002) holds that "(the Court's holding in the *Austin* case) would be frustrated if the one year statute of limitations for PCR claims applied where the

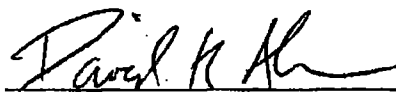
applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.” This is exactly what Applicant claims in his application for PCR.

Applicant’s claim must be assumed to be true for purposes of this Motion, as seen in the *Wilson* case in pertinent part: “when considering the State’s motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.” *Wilson v. State*, 348 S.C. 215; 217 (2002).

CONCLUSION

There is a clear lack of *Faretta* warnings in the transcript of Applicant’s plea. Therefore, Applicant has an excellent chance to prevail if allowed to go to a hearing on this matter. Applicant respectfully requests the Court to reconsider its ruling and allow this matter to be decided on the merits.

THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Applicant
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(803) 764-2328
(803) 764-2548 (fax)

West Columbia, South Carolina
June 7, 2016

FILED
JUN 24 A 11:30
CLERK OF COURT
LEXINGTON, SC

348 S.C. 215 (2002)
559 S.E.2d 581

Harold Fitzgerald WILSON, Petitioner,
v.
STATE of South Carolina, Respondent.

No. 25399.

Supreme Court of South Carolina.

Submitted November 28, 2001.

Decided January 28, 2002.

216 *216 Senior Assistant Appellate Defender Wanda H. Haile, of South Carolina Office of Appellate Defense, of Columbia, for petitioner.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General B. Allen Bullard, Jr., and Assistant Attorney General Douglas E. Leadbitter, all of Columbia, for respondent.

Chief Justice TOAL.

Harold Fitzgerald Wilson ("Wilson") filed for post-conviction relief ("PCR") arguing he had ineffective assistance of counsel, the evidence against him was insufficient to secure an indictment, and the trial judge was not impartial. The PCR court dismissed Wilson's claim on summary judgment, ruling that he failed to timely file his application.

FACTUAL/PROCEDURAL BACKGROUND

On July 26, 1995, a grand jury in Georgetown County indicted Wilson on one count of armed robbery. On October 18, 1995, a jury convicted Wilson of the charge, and the trial court sentenced Wilson to thirty (30) years confinement in the Department of Corrections. Wilson claims he instructed his attorney to appeal his conviction; however, no appeal was filed.

217 On September 30, 1997, Wilson filed an application for PCR alleging ineffective assistance of counsel, the evidence against *217 him was insufficient to secure an indictment, and the trial judge was not impartial. The State moved to dismiss Wilson's claim arguing the claim was untimely under the applicable statute of limitations set forth in S.C.Code Ann. § 17-27-45(A) (Supp.2000).¹¹ On November 24, 1998, the PCR court granted the State's motion to dismiss. Wilson now appeals. The sole issue before this Court is:

Does the statute of limitations for PCR applications, S.C.Code Ann. § 17-27-45(A), apply to an applicant who alleges that he did not knowingly and intelligently waive his right to a direct appeal from his criminal conviction?

LAW/ANALYSIS

Wilson argues that the PCR judge erred by summarily dismissing his PCR application based on his failure to file within the applicable statute of limitations as set forth in S.C.Code Ann. § 17-27-45(A). We agree.

When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000).

To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Wilson alleges that he requested an appeal from his original conviction, but his lawyer failed to timely file the appeal. Viewed in the light most favorable to Wilson, the evidence suggests that Wilson did not voluntarily waive his direct appeal.

218 This Court has ruled, in Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), that the one year statute of limitations required by S.C.Code Ann. § 17-27-45(A), does not apply to *218 Austin^[2] appeals. Austin appeals do not have to be filed within the one year statute of limitations because they are belated appeals intended to correct unjust procedural defects. A petitioner is entitled to an Austin appeal if the PCR judge affirmatively finds either that (1) the applicant requested and was denied an opportunity to seek appellate review, or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom, 337 S.C. at 262, 523 S.E.2d at 756.

We extend our reasoning in Odom and Austin to the instant situation. A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal^[3] and one PCR application. In this case, Wilson has not had "one bite of the apple" since he has not received either a direct appeal from his conviction or a PCR hearing. See Poston v. State, 339 S.C. 37, 528 S.E.2d 422 (2000); Odom.

Just as it was in Odom, Austin's policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.

CONCLUSION

219 For the foregoing reasons, we REVERSE the PCR court's ruling that Wilson's PCR application was barred by the one year statute of limitations and REMAND to the PCR court to *219 conduct an evidentiary hearing to determine if Wilson knowingly and intelligently waived his right to direct appeal.

MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

[1] Section 17-27-45(A) provides: "An application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal of the filing of the final decision upon an appeal, whichever is later."

[2] Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). In Austin, petitioner's counsel failed to file a timely appeal following the denial of a PCR application. The petitioner then filed a subsequent PCR application claiming ineffective assistance of counsel during his first application for PCR. This Court ruled that petitioner's case must be remanded for an evidentiary hearing to determine whether petitioner requested and was denied the right to appeal.

[3] After the client is convicted and sentenced, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and if the client is indigent, assist the client in filing an appeal. In re Anonymous Member of the Bar, 303 S.C. 306, 307, 400 S.E.2d 483 (1991); see also Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

Save trees - read court opinions online on Google Scholar.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Joshua Lamar Forrest,
S.C.D.C. #274525

Applicant,

vs.

State of South Carolina,

Respondent.

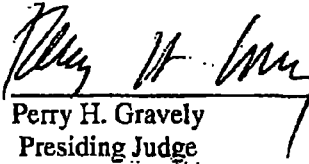
IN THE COURT OF COMMON PLEAS
Case No. 2014-CP-32-01397

ORIGINAL

ORDER

This matter comes before the Court upon Applicant's Motion to Alter/Amend Judgment of the Order dismissing his Post-Conviction Relief claim, filed by and through counsel on June 7, 2016. After fully considering said Motion, this Court finds no need for oral argument in this matter, and the Motion to Alter/Amend Judgment is DENIED;

AND IT IS SO ORDERED!


Perry H. Gravely
Presiding Judge

, South Carolina

June 17, 2016

FILED
2016 JUN 22 AM 11:01
BETH A. CALLEG
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201397

Joshua Lamar Forrest
#274525

State of South Carolina

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.

Circuit Court Judge

Judge Code

6/27/2016

Date



Kellum W. Allen, Esq.*
Kellum@TheAllenLawFirm.org

David K. Allen, Esq.
David@TheAllenLawFirm.org

Mailing Address:
 P.O. Box 3241
 West Columbia, SC 29171

Physical Address:
 519 Meeting Street
 West Columbia, SC 29169

Office: (803) 764-2328
 Toll Free: (844) 839-5170
 Fax: (803) 764-2548

July 6, 2016

RECEIVED

AUG 01 2016

The Supreme Court of South Carolina
 ATTN: Daniel Shearouse, Clerk of Court
 PO Box 11330
 Columbia, SC 29211

S.C. SUPREME COURT

Re: Rule 203(d)(1)(B)(iv) Explanation
Joshua Lamar Forrest, #274525, v. State of South Carolina;
 Case Number: 2014-CP-32-1397

Dear Sir or Madam:

Please find the enclosed Explanation pursuant to Rule 203(d)(1)(B)(iv) of the S.C. Appellate Court Rules, as requested in your letter dated July 22, 2016. Also enclosed is a copy which I respectfully ask you to stamp as "filed" and return to me in the enclosed stamped envelope.

I am hereby serving same on opposing counsel, Johanna C. Valenzuela, Esq.

Thank you for your assistance.

Sincerely:

David K. Allen, Esq.

DKA/idi
 Enclosures

cc: Mr. Joshua Lamar Forrest
 Johanna C. Valenzuela, Esq.

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.
(2014-CP-32-01397)

RECEIVED

JUL 11 2016

SC SUPREME COURT

Joshua Lamar Forrest,.....Appellant

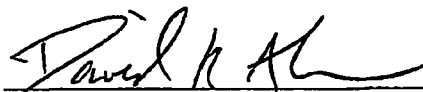
v.

State of South Carolina,.....Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 1, 2016, sent by the Clerk of Court on June 2, 2016 and received by Counsel on June 6, 2016, and the Order denying Rule 59(e) Motion filed June 22, 2016, sent by the Clerk of Court on June 27, 2016 and received by Counsel on June 29, 2016. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, July 6, 2016.

THE ALLEN LAW FIRM, P.A.



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Johanna C. Valenzuela, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

ORIGINAL

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.
(2014-CP-32-01397)RECEIVED
AUG 01 2016
S.C. SUPREME COURT

Joshua Lamar Forrest, ... Appellant

v.

State of South Carolina, ... Respondent.

Rule 203(d)(1)(B)(iv) Explanation

This appeal is from an Order dismissing Appellant's application for Post-Conviction Relief. The Honorable Perry H. Gravely dismissed Appellant's PCR without a hearing, in part, because Judge Gravely found Appellant's application was barred by the one- year "Statute of Limitations" applicable to PCR applications (S.C. Code Ann. §17-27-45(a)).

While the application was certainly filed well after one (1) year, Appellant's position is that the holdings in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) and Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002) render the Statute of Limitations inapplicable in this matter. (See attached Exhibits A & B). The Wilson case specifically states that "Austin's policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations." Wilson, at 218. It is clear in Appellant's plea transcript (attached as Exhibit C) that he was not advised of the dangers of self-

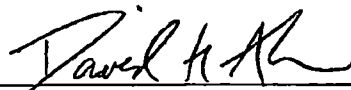
representation at his plea, as required by Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). (See attached Exhibit D). Therefore, he was improperly proceeding without counsel, in contravention to his Sixth Amendment right to assistance of counsel. Had Appellant challenged this by appeal, he would have had a meritorious issue requiring the overturning of his plea.

Judge Gravely states in his Order that the Faretta claim need not be considered because “the cast at hand is distinct from Wilson.” (See attached Order, p. 6, attached as Exhibit E). Briefly put, Judge Gravely states that Appellant’s failure to receive a direct appeal “was not due to ineffective counsel, but due to his own inaction.” (See attached Order, p. 7). Judge Gravely also states in footnote 1 of his Order that Appellant received a full PCR hearing on the same indictment “as is now at issue.” (See attached Order, p. 6).

Appellant submits that being denied one’s right to assistance of counsel under the Sixth Amendment is tantamount to “ineffective assistance of counsel” as contemplated in the Wilson holding, and therefore, Appellant’s case is *on all fours* with Wilson. Appellant further submits that his prior PCR hearing did not address the merits of his underlying plea, but rather, a probation violation that occurred later. While it is true that Applicant’s initial PCR application lists the indictment number of the underlying plea, the allegations of the Amended Application clearly show Appellant (and his PCR counsel) were collaterally attacking various arising out of Appellant’s probation revocation hearing (not his plea). (See attached Amended Application, as Exhibit F). The witnesses called at this hearing were Appellant’s probation revocation lawyer and probation agent, and the transcript introduced at this hearing was the probation revocation hearing transcript, not the transcript of the guilty plea Appellant challenges in this action. (See attached Order of Dismissal, attached as Exhibit G).

While Appellant believes it is clear on its face that his case is due to "ineffective assistance of counsel" and that the prior PCR hearing examined the merits of a different proceeding than that which is challenged here, these facts must be construed in Appellant's favor for the purposes of a hearing to summarily dismiss his PCR based on the Statute of Limitations. "When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by applicant are true and view those facts in the light most favorable to the applicant." Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000).

THE ALLEN LAW FIRM, P.A.



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(803) 764-2548 (fax)

West Columbia, South Carolina
July 27, 2016

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.
(2014-CP-32-01397)

RECEIVED

JUL 11 2016

SC SUPREME COURT

Joshua Lamar Forrest, ...Appellant

v.

State of South Carolina, ... Respondent.

RULE 243(c) EXPLANATION

SUCCESSIVENESS

The State argues Appellant's current application is successive because he had a prior PCR application in Aiken County, challenging a probation revocation. The State argues Appellant should have challenged the Lexington guilty plea, which he is now challenging in this PCR, in that prior application.

South Carolina Code Section 17-27-40 holds, "A proceeding is commenced by filing an application verified by the applicant **with the clerk of the court in which the conviction took place**" (emphasis added). Therefore, Appellant could not have challenged his Lexington guilty plea in the same application by which he challenged his Aiken probation revocation.

The successive application statute, S.C. Code §17-27-90, requires "all grounds for relief **available to an applicant** under this chapter must be raised in his original, supplemental, or amended application" (emphasis added). A challenge of Appellant's Lexington County plea was

not "available" to him in the same application as his challenge to the Aiken County probation revocation, per S.C. Code §17-27-40. Therefore, this application should not be dismissed as a "successive" application.

STATUTE OF LIMITATIONS

Appellant never received "one fair bite at the apple" since he did not receive a direct appeal of his plea or a PCR hearing. Appellant alleges in his application that he never waived his right to counsel and "when considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." *Wilson v. State*, 348 S.C. 215; 217 (2002).

The *Wilson* case further holds that "(the Court's holding in the *Austin* case) would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations" *Id.* at 218.

Therefore, because it must be assumed that Appellant was improperly denied assistance of counsel altogether, causing Appellant to not know of his right to appeal, the *Wilson* case requires that the Statute of Limitations must not bar his application.

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West Columbia, South Carolina
July 6, 2016

WITNESSES	
LCSD	
Amick	
ARREST WARRANT NUMBER	
F-850221	
ACTION OF GRAND JURY	
TRUE BILL	
Foreperson of Grand Jury	<i>[Signature]</i>
Date:	31-06-98
VERDICT	
Foreperson of Petit Jury	<i>[Signature]</i>
Date:	

DOCKET NO. 98-GS-32- 2369

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

JOSHUA LAMAR FORREST

CDR# 139

Indictment for

**ROBBERY & ATTEMPTED ROBBERY
WHILE ARMED WITH A
DEADLY WEAPON
§16-11-330**

DONALD V. MYERS, SOLICITOR

Pleading to Attempted Armed Robbery.
05-20-98
Violent, most serious, felon
No 1st de
1st-2nd
DNA Latent
No FBI
- Negotiated probation
to Attempted AR
1st included offense
- #451 Retention

86
 COUNTY OF LEXINGTON
 STATE OF SOUTH CAROLINA
 86
 WEST WING

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 ROBBERY & ATTEMPTED ROBBERY
 WHILE ARMED WITH A
 DEADLY WEAPON
 §16-11-330

At a Court of General Sessions, convened on JULY 6, 1998 the Grand Jurors of
 LEXINGTON County present upon their oath:

**ROBBERY AND ATTEMPTED ROBBERY WHILE ARMED
 WITH A DEADLY WEAPON §16-11-330**

That **JOSHUA LAMAR FORREST**, did in Lexington County on or about June 5,
 1998, while armed with a deadly weapon, to wit: a semi-automatic firearm, willfully,
 unlawfully and feloniously take from the person of another, to wit: **R&B Video**, carry
 away the goods of another, U. S. Currency, with the intent to deprive them permanently
 of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws
 (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
 made and provided.

[Signature]
 ASST SOLICITOR
A TRUE COPY
[Signature]
 Lex. Co. C.C.C.P., G.S. & E.C.

STATE OF
SOUTH CAROLINA

ARREST WARRANT

F- 850221

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

THE STATE
against

JOSHUA LAMAR FORREST

AIKEN, SC 29801

Phone: _____ SSN: _____
Sex: M Race: B Height: 5-10 Weight: 170
DL State: _____ DL #: _____
DOB: _____ Agency ORI #: 3200
Prosecuting Agency: L. C. S. D.
Prosecuting Officer: AMICK
Offense: ARMED ROBBERY W/DEADLY WEP

Offense Code: _____
Code/Ordinance Sec. 16-11-330 139

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant JOSHUA LAMAR FORREST
on 6/8/98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

BRUCE RUTLAND
650 KNOX ABBOTT DR.
CAYCE, SC 29033
803-796-7100

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

Personally appeared before me the affiant ROY L. SMITH who
being duly sworn deposes and says that defendant JOSHUA LAMAR FORREST
did within this county and state on 06/05/1998 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: ROBBERY AND ATTEMPTED ROBBERY WHILE ARMED WITH
DEADLY WEAPON

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT, JOSHUA L. FORREST, WHILE ARMED WITH A SEMI
AUTOMATIC FIREARM, DID COMMIT A LARCENY BY TAKING MONEY FROM R&B
VIDEO LOCATED AT 4020 PLATT SPRINGS ROAD IN THE LEXINGTON AREA OF
LEXINGTON COUNTY, SOUTH CAROLINA. THAT THE DEFENDANT DID USE A
THREAT OF FORCE WHILE IN THE PROCESS OF SAID LARCENY. ALL
CONSTITUTES THE OFFENSES OF ARMED ROBBERY WHILE ARMED WITH A DEADLY
WEAPON.

Sworn to and subscribed before me
on 06/06/1998

Signature of Issuing Judge (L.S.)
BRUCE RUTLAND

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lexington

AFFIDAVIT

X Roy L. Smith
Signature of Affiant
Affiant's Address 115 NORMAN DRIVE
WEST COLUMBIA, SC 29172
Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 06/05/1998 defendant JOSHUA LAMAR FORREST
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-330

ROBBERY AND ATTEMPTED ROBBERY WHILE ARMED WITH
DEADLY WEAPON

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address 650 KNOX ABBOTT DR.
CAYCE, SC 29033
803-796-7100
Judge's Telephone _____
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge Code: 414

ORIGINAL

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

Exhibit A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

vs.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

98

INDICTMENT/CASE#:

-GS-

32

2369

AW#:

F-850221

Date of Offense:

6-5-98

S.C. Code §:

16-11-330(A)

CDR Code #:

0101216

☒ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Attempted Armed Robberyin violation of S. 16-11-330(B) of the S.C. Code of Laws, bearing CDR Code # 0101216☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daniel S. W.

Solicitor

Joshua Forrest

Defendant

Pro Se

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 010 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 3 DAYS

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ 457 plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$

\$

\$

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PTUP

20 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

21-1-13-1011-17-05

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Created by the South Carolina Department of Probation, Parole and P.A. Services

STATE OF SOUTH CAROLINA

County of Aiken
STATE VS.Joshua L. Forrest

AKA:

Race: B Sex: MDOB: [REDACTED]SSN: [REDACTED]SID#: D1141576

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

98 -GS- 32 - 02369CWN#: W-02-05-0385Name of Original Offense: Att. 1st degree murderConviction S.C. Code §: 16-11-0330 (E)Conviction GDR Code #: 2, 1, 1, 1Date of Original Offense: 06/05/1998Original Sentence: 10 yrs SS upon time served**ORDER 3 yrs probation**

The above named defendant has been charged with violating the conditions of probation ordered on 11/17/2006 in the Court of General Sessions of LIVINGSTON County as set forth in the attached warrant or citation dated 12/22/2005. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 3, 4, 10

Therefore, IT IS ORDERED that:

☒ the suspended sentence be revoked and the above named defendant be required to serve 10 months/years, the remainder of the original sentence, and/or pay \$.

☐ the suspended sentence be revoked and the above named defendant be required to serve months/years of the original sentence and/or pay \$; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court: Deem all monies uncollectible except restitution if owed. Terminate the balance of balance.

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 3 months/years on this sentence. days
(split sentence time and/or prior partial revocation time)

This 7th day of Dec. 2006

Aiken SC.

MR. [Signature] Judge Early
Presiding Judge Danberg
Second Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature Joshua L. Forrest

Witnessed by Gregory Couch

Signed this 7th day of Dec. 2006 at Aiken SC.