

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

ROBERT JAMES #261393  
Appellant,

v.

STATE OF SOUTH CAROLINA  
Respondent.

IN THE SOUTH CAROLINA  
SUPREME COURT

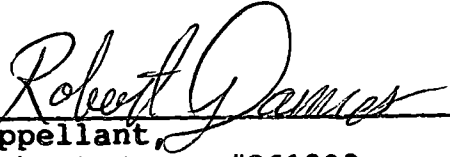
2015-CP-40-05187

MOTION AND NOTICE OF APPEAL

I, ROBERT JAMES #261393, hereby appeal the decision of  
the PCR Court, of the dismissal of my PCR application, filed  
April 24, 2017.

Respectfully submitted,

May 17, 2017.  
Kershaw, South Carolina

  
Appellant,  
Robert James #261393  
K.C.I. H.C.114  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067

**RECEIVED**

MAY 17 2017

S.C. SUPREME COURT

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4005187

Robert #261313 Anthony James

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- 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
		\$
		\$
		\$

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 2118 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of June, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Robert #261313 Anthony James

Jessica Elizabeth Kinard

Robert #261313 Anthony James

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

**SCANNED**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Robert Anthony James, #261393,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2015-CP-40-05187

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed August 25, 2015.

### I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the August 1999 term of the Richland County Grand Jury for two counts of Armed Robbery, Assault and Battery With Intent to Kill, two counts of Possession of Firearm or Knife During Commission of or Attempt to Commit Violent Crime, two counts of Kidnapping, and Criminal Sexual Conduct in the first degree (1999-GS-40-22843—22846). Applicant was represented on the charges by John Shupper, Esquire. A jury trial on the charges was held in September 1999 before the Honorable Costa M. Pleicones. The jury convicted Applicant as charged. On September 24, 1999, Judge Pleicones sentenced Applicant to thirty years for the criminal sexual conduct charge, ten years for armed robbery (to be served consecutively), thirty years for the second armed robbery charge (to be served concurrently), thirty years for kidnapping (to be served concurrently), ten years for assault with intent to kill (to be served concurrently), and five years on each possession of firearms charge (to be served concurrently), for a total of forty years. Applicant appealed his convictions and sentence.

RICHLAND COUNTY  
FILED  
2016 JUN -1 AM 11:00  
JEANETTE W. McBRIDE  
CLERK, C.P. & G.S.

**SCANNED**

Applicant was represented on appeal by Wanda H. Haile of the South Carolina Office of Appellate Defense. An Anders<sup>1</sup> brief was filed on Applicant's behalf on September 13, 2000 in the South Carolina Court of Appeals, as well as a petition to be relieved as counsel. The court dismissed the appeal and affirmed the convictions on March 21, 2001. Remittitur was issued on April 4, 2001.

**2001-CP-40-03299**

Applicant subsequently filed an application for post-conviction relief on August 8, 2001, where he alleged he was being held unlawfully for the following reasons:

1. Trial counsel fail[ed] to adequately prepare for the case, to do a legal and factual investigation[,] to exercise due diligence in the preparation of the defense's case and to the circumstances of it deprived [Applicant] of the right to effective assistance of counsel in violation of Article I §§ 3, 14 of the State Constitution as well as the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.
2. Appellate counsel was ineffective in failing to raise issues preserved below, which would have entitled [Applicant] to reversal on appeal. A defendant is constitutionally entitled to effective assistance of counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830 (1985); see also, *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983) (appellate counsel's duty to raise issues on appeal).

On January 7, 2005, represented by Tara Dawn Shurling ("Shurling"), Petitioner filed an amended PCR application. In the amended application, Petitioner raised eleven issues for review (quoted verbatim):

Issue 1: Trial judge erred in denying defense's motion to quash indictment and dismiss charges due to State's failure to timely act on arrest warrants, violation of Rule 3(c), SCRCrimP. The Solicitor failed to file the indictments with the Clerk of Court. Also, State lacked Subject Matter Jurisdiction by State's failure to comply.

Issue 2: Trial Counsel was ineffective for failing to object to "sleeping jurors" not being removed or questioned.

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<sup>1</sup>A brief filed pursuant to Anders v. California, 386 U.S. 738 (1967) effectively concedes the appeal lacks a meritorious claim.

Issue 3: Trial counsel was ineffective in failing to object to trial Court's erroneous instructions. The Court instructed the jury on the elements of accomplice liability, referred to as aiding and abetting, (or, the hand of one is the hand of all), when [Applicant] was charged as the principal. This instruction impermissibly dilutes the presumption of innocence. *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 281 (1980).

Issue 4: Trial Court lacked Subject Matter Jurisdiction due to prohibited practice of prosecutors appearing as sole witness before Grand Jury.

Issue 5: Trial Counsel was ineffective for allowing the violation of [Applicant's] Due Process Right to a Speedy Trial as [Applicant] awaited trial for two years and nine months. The delay in bringing the case to trial undoubtedly prejudiced [Applicant] because of forgotten facts and confused and incomplete recollections. [Applicant's] alibi witness could not rely on her memory and the [Applicant] himself could not remember with certainty what had occurred seven months prior to his arrest. Further, the memories and whereabouts of defense witnesses were compromised and lost. There were no continuance orders that mention exceptional circumstances, and the State has never offered any justification for the significant delay.

Issue 6: Trial counsel failed to adequately prepare for case...by failing to obtain the assistance of experts.

Issue 7: Appellate Counsel was ineffective in failing to sufficiently raise any arguable issues in brief on Appeal. Ms. Haile filed an Anders Brief. Arguable issues included needed severance and imputed guilt of [Applicant] because of being tried with his co-defendant. [Applicant] contends that the transcript amply documents significant preserved errors and [Applicant's] trial counsel provided a six page letter to Ms. Haile that detailed many arguable, preserved issues.

Issue 8: Trial counsel failed to call witnesses that could dispute the State's theory that [Applicant] lived at [redacted]. If the landlord had been asked to testify he would have said that [Applicant] did not live there and was not even allowed on the property. Also, Henrietta Jordon (former girlfriend) could have been an effective alibi witness if she had been called to testify nearer to the time of the incident – but, because it took so long to get to trial, she could no longer state with certainty how long she and [Applicant] were together on that day. Trial Counsel was informed about all this and said he would look into it, but never talked about it again. State's witness and victim, Ms. [Redacted] frequently stated that she was "not sure" and "I honestly can't say who did what – it happened so fast." The delay in bringing the case to trial undoubtedly prejudiced [Applicant] because of forgotten facts and confused and incomplete recollections.

Issue 9: Trial counsel was ineffective for failing to object when the State

pushed to try [Applicant] under the *new* Armed Robbery Statute. The State pushed to try [Applicant] under the *new* Armed Robbery Statute because where under the old statute, a main element is that the suspect had to actually be armed and the offense predated the new statute.

Issue 10: Indictments should have been quashed instead of amended. Trial Counsel erred in not objecting to the Judge deleting from the indictments with his own pen.

Issue 11: Trial counsel was ineffective for failing to impeach State's witness Dr. Stacey Smithson. The State described the attack on the victim as "vicious." Dr. Smithson corroborated these claims stating that he found redness, abrasions, and lacerations, etc. However, Dr. Smithson's written examination report states that there were no signs of trauma on any part of the victim's body.

An evidentiary hearing was convened on January 14, 2005, at the Richland County Courthouse. Applicant was present and represented by counsel Tara D. Shurling, Esquire. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Mr. Shupper. On August 19, 2005, the PCR Court issued an Order of Dismissal denying relief and finding that the issues raised by Applicant were without merit.

Applicant then appealed the decision made by the PCR court and filed a timely notice of appeal. Applicant was represented by Appellate Defender Eleanor Duffy Cleary of the South Carolina Commission on Indigent Defense. Counsel filed a petition for writ of certiorari on Applicant's behalf on February 27, 2008, raising the following issues:

Whether trial counsel was ineffective for failing to argue that petitioner's indictments should be dismissed because the state violated his Sixth Amendment right to a speedy trial and petitioner was prejudiced by this deficiency because the indictments would have been dismissed had the issue been properly raised to the trial judge?

The South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals heard oral arguments and issued an unpublished opinion on October 27, 2011, affirming Applicant's convictions and sentences. Applicant filed a petition for

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rehearing, which was denied on December 20, 2011. Applicant then filed a petition for writ of certiorari to the South Carolina Supreme Court, which was granted on April 3, 2012, but subsequently dismissed as “improvidently granted” on November 21, 2012. Remittitur was issued on December 7, 2012.

**8:13-1738-TMC-JDA**

Applicant subsequently filed a petition for a writ of habeas corpus in the federal district court on June 21, 2013, where he raised the following grounds for relief:

**Ground One:** Ineffective assistance of trial counsel for allowing the violation of Applicant’s Sixth Amendment right to a speedy trial.

*Supporting Facts:* The state held Applicant in jail for 993 days before calling his case to trial. Applicant filed pro se speedy trial motions 1998 and 1999. At trial Applicant moved to dismiss the charges because the state failed to provide him a speedy trial. Trial judge made three significant factual findings: (1) Applicant wanted a speedy trial, (2) the delay was “horrendous,” and (3) prosecution’s justification for the delay was “not terribly well explained.” Trial counsel failed to argue prejudice or cite United States Supreme Court precedent requiring dismissal.

**Ground Two:** Trial counsel was ineffective for failing to object to “sleeping jurors” not being removed or questioned.

*Supporting Facts:* Trial judge clearly stated on record that he himself had noticed one of the jurors had “dozed off a time or two... It may have been a classic case of resting his eyes. But I’m here for comment if anybody wants to make a comment on that.” Trial counsel failed to object.

**Ground Three:** Trial counsel was ineffective in failing to object to trial court’s error in giving instructions which unconstitutionally diluted the state’s burden of proof.

*Supporting Facts:* Trial court instructed the jury on the elements of aiding and abetting when Applicant was not indicted for this offense/charge, but was charged as the principal. Instructions impermissibly dilute the presumption of innocence.

**Ground Four:** Trial counsel was ineffective for failing to object when the state pushed to try Applicant under new armed robbery statute.

*Supporting Facts:* Current armed robbery statute adds elements not in effect at

the time the incident occurred. Applicant should've been tried under statute that was in effect when the offense occurred, trial counsel ineffective for not objecting. Indictments should've been quashed instead of amended. Trial counsel erred in not objecting to trial judge deleting from the indictments with his own pen.

**Ground Five:** Trial judge erred in denying defense's motion to quash the indictments and dismiss charges due to state's violation of Rule 3(c).

*Supporting Facts:* The State's violation of Rule 3c SCR Crim P, S.C. Const. Art. 1, Sec. 8, S.C. Const. Art. V, Sec. 4. The state failed to timely act on the arrest warrants – warrants issued 1996, indicted August 1999 – The Solicitor failed to also file the indictments with the Clerk of Court. Also, state lacked subject matter jurisdiction by state's failure to comply.

**Ground Six:** Trial counsel was ineffective for failing to impeach state's witness, Dr. Stacey Smithson.

*Supporting Facts:* The state described the attack on the victim as "vicious." Dr. Smithson corroborated these claims by stating that he found redness, abrasions and lacerations, etc. However, Dr. Smithson's written examination report states that there were no signs of trauma on any part of the victim's body.

**Ground Seven:** Trial judge erred in denying directed verdict.

*Supporting Facts:* At the close of the state's case, Applicant's counsel moved for a directed verdict, setting forth the state's inability to present "enough evidence that even giving it as much light as the Court wanted to," however, considering all the evidence, there was no sufficient evidence to convict (sustain a conviction) or even send the case to the jury against Applicant.

**Ground Eight:** Appellate counsel Wanda H. Carter was ineffective in filing a frivolous brief on appeal.

*Supporting Facts:* In her petition to be relieved as counsel, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), counsel states she has thoroughly reviewed Applicant's lower court record, and in her opinion the record fails to demonstrated either preserved or other legally substantial issues to present to the court. However, transcript of trial proceedings and facts contained therein, will confirm that several arguably issues were preserved for appellate review.

The State made its Return and Motion to Dismiss on November 22, 2013. On October 14, 2014, the court filed an Order granting the motion for summary judgment and denying the petition.

SCANNED

## CURRENT APPLICATION

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

1. Ineffective assistance of PCR and PCR Appellate counsel.

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

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

**SCANNED**

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

#### **Statute of Limitations**

This Court further finds that this Application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty of the offenses he challenges on September 24, 1999. The remittitur from Applicant's direct appeal was issued on April 4, 2001, so he was therefore required to file his application on or before **April 4, 2002**. This application was filed on August 25, 2015, which was over thirteen (13) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a

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motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

#### **Ineffective Assistance of PCR Counsel**

This Court further finds that this Application for Post-Conviction Relief should be summarily dismissed because it is a successive application for post-conviction relief and raises a claim that is not proper for post-conviction relief.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and is not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991).

The South Carolina Supreme Court in Aice v. State, held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. Id. at 451, 409 S.E.2d at 395. The Court in Aice further held that "the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394. The


Applicant's contention that prior PCR counsel was ineffective is not per se a sufficient reason warranting a successive PCR application under § 17-27-90.

**III. CONCLUSION**

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

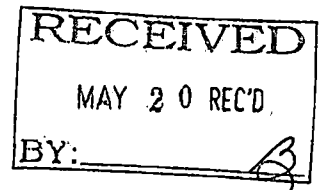
Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division – 5<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 27<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Alison Renee Lee  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

Columbia, South Carolina

**SCANNED**



ALAN WILSON  
ATTORNEY GENERAL

May 18, 2016


The Honorable Alison Renee Lee  
Chief Administrative Judge  
PO Box 192  
Columbia, SC 29202-0192

Re: Robert Anthony James, #261393 v. State of South Carolina  
2015-CP-40-5187

Dear Judge Lee:

Enclosed please find a proposed original **Conditional Order of Dismissal** in the above-captioned case. If this Order meets with your approval, please sign it and send it back to our office so that I can file it with the Clerk's office.

Sincerely,

  
J. Clayton Mitchell  
Assistant Attorney General

JCM/jcb  
Enclosure

cc: Robert Anthony James, #261393

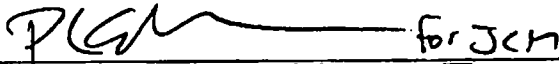
SCANNED

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
ROBERT ANTHONY JAMES, #261393 )  
 PLAINTIFF, )  
 vs. )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Docket No.: 2015-CP-40-5187

Plaintiff: <b>ROBERT ANTHONY JAMES, #261393</b> <b>KERSHAW CORRECTIONAL INSTITUTION</b> Bar No. _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <b><u>J. CLAYTON MITCHELL</u></b> PO Box 11549 Columbia, SC 29211-1549 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: <u>05/18/2016</u>	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: _____ (check reason)	
<input type="checkbox"/> Cause in Child or Spousal Support <input type="checkbox"/> Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCPP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____  Judge Signature: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

**SCANNED**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Robert Anthony James, #261393,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-05187

**FINAL ORDER OF DISMISSAL**

2017 APR 24 AM 11:26  
JEANNE M. GOSWAMI  
CLERK OF COURT  
RICHLAND COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 25, 2015. Respondent made its Return on or about May 24, 2016, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR application and raises an issue not cognizable in PCR.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 27, 2016 and filed June 1, 2016, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Form 4 from the Richland County Clerk of Court dated June 2, 2016, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Response to Return and Motion to Dismiss," on July 1, 2016, in which Applicant argues ineffective assistance of PCR counsel and PCR appellate counsel.


This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant still fails to present any reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

Applicant argues that Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309 (2012), entitles him to have the Court examine his conviction and his prior PCR counsel's conduct regarding his prior conviction. This Court finds that Martinez has no bearing on Applicant's ability to raise ineffective assistance of counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, in Martinez, the United States Supreme Court held that "[w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Id. at 1320. See Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013) (expressly adopting this holding in South Carolina). Concerning state court, the Supreme Court of South Carolina has recognized that "the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Id. Consequently, Applicant's contention that he received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application. See id.

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

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

AND IT IS SO ORDERED this 21 day of April, 2017.

  
\_\_\_\_\_  
DEANDREA G. BENJAMIN  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4005187

Robert #261313 Anthony James

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. No. suit);  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
		\$
		\$
		\$

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 \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24<sup>th</sup> day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Robert #261313 Anthony James

Jessica Elizabeth Kinard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

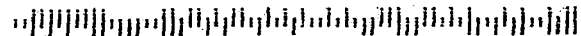
ROBERT James #201393  
K.C.1. H.C. 114  
4846 Goldmine Hwy.  
Kershaw, S.C. 29067

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THE SUPREME COURT OF SOUTH CAROLINA  
Daniel E. Shearouse, Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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