

Yvonne Robertson # 191327
Lieber Connections Institution
RHU/SMU 1438
236 Wilborn Avenue
Ridgeville, SC 29472

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MAY 26 2017

S.C. SUPREME COURT

S.C. Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

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MAY 24 2017

SC Court of Appeals

DATE: MAY 19, 2017

Dear Clerk

Enclosed with this letter is an original copy of Notice of Appeal; final order; Motion to alter or Amend Judgment; Affidavits; Memo: on Ruling could reduce bail time (Las Vegas Review-Journal has Vegas Sun News paper article); and ORDER of Dismissal in PCR case # 95-CP-27-211 identifying claims by Appellant that adjudicated for appellate Review. Please clock date stamp and file accordingly in my behalf. Also, will be appointed counsel representation from the South Carolina Commission on Indigent Defense 1330 Lady Street, Suite 401 Columbia, SC 29201-3332... I'll appreciate your timely reply concerning this matter, thank you.

RESPECTFULLY SUBMITTED
Yvonne ROBERTSON

cc.

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S.C. SUPREME COURT

SOUTH CAROLINA COURT OF APPEALS

CASE No. _____

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SC Court of Appeals

APPEAL FROM WASPER COUNTY COURT OF COMMON PLEAS
CARMEN T. MULLEN, Circuit Court Judge
Case No. 2012-CP-27-0376

Tyrone Lamar Roberson

Petitioner-Appellant

V.

State of South Carolina

Respondent-Appellee.

NOTICE OF APPEAL

Appeal From The Honorable Carmen T. Mullen of The Fourteenth Judicial Circuit Court of Wasper County South Carolina Final order of Dismissal in Re: Tyrone L. Roberson, #192327 V. State of South Carolina Case No. 2012-CP-27-0376 Filed January 31, 2017 AM 9:35 Wasper County Clerk of Court. This Appeal is taken by Appellant from an adverse order of dismissal by Judge Carmen T. Mullen.

Petitioner-Appellant via in-coming legal mail at Lieben Connections Institution during February 8, 2017 signed for and received written notice of order by mail. This Appeal Follows.

SIGNED THIS 22nd DAY OF February 2017

RESPECTFULLY SUBMITTED
Tyrone L. Roberson #192327
Lieben Connections Institution
4411 S.W. 143-8
136 Wilbama Avenue
Ridgeville, South Carolina 29478-0205

SOUTH CAROLINA COURT OF APPEALS
CASE No. _____

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MAY 24 2017

SC Court of Appeals

APPEAL FROM JASPER COUNTY COURT OF COMMON PLEAS
Cammie T. Mullen, Circuit Court Judge
Case No. 2012-CP-27-0376

Tymone Lamar Roberson, 191327

Petitioner - Appellant

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MAY 26 2017

v.

S.C. SUPREME COURT

State of South Carolina

Respondent - Appellee.

PROOF OF SERVICE

Petitioner TYMONE L. ROBERSON hereby certify that I have served the Notice of Appeal on the Respondent - Appellee last known physical address by depositing a copy of it in the United States Mail with postage prepaid to be delivered upon: JASPER COUNTY CLERK OF COURT 265 RUSSELL STREET RIDGELAND, SOUTH CAROLINA 29936.

SIGNED THIS 22ND DAY OF February 2017.

RESPECTFULLY SUBMITTED
TYMONE L. ROBERSON
TYMONE LAMAR ROBERSON # 191327
Liebert connections substitution
RHM/SMH 143-B
136 Wilborn Avenue
Ridgeville, South Carolina 29472-0205

cc. Attorney General office
1000 Assembly Street
Columbia, S.C. 29201.

S.C. COURT OF APPEALS
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201.

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MAY 26 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Tyrone L. Roberson,)
S.C.D.C. No. 191327)
Applicant,)

2014-CP-27-0376

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

2014 OCT 16 PM 2:52
CLERK OF COURT
JASPER COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed June 11, 2012. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Tyrone L. Roberson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. He was indicted at the March 1992 term of General Sessions for the Jasper County Grand Jury for murder (1992-GS-27-001), armed robbery (1992-GS-27-011), and burglary in the second degree (1992-GS-27-012). Frederick Corley and William F. Manscher III, Esquires, represented Applicant. On October 23, 1992, Applicant pled guilty as indicted. The Honorable Gerald C. Smoak sentenced him to life imprisonment for murder, twenty-five years imprisonment for armed robbery, and fifteen years imprisonment for burglary in the second degree, all sentences to be served consecutively. Applicant did not appeal his guilty plea or sentence.

1995-CP-27-211

Applicant filed his first PCR application on August 16, 1995, alleging the following grounds
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: Michelle M. Smith
DATE: 10/17/14

~~FILED~~
DATE 10/16/14

for relief:

1. Was not aware of the appeals process and was not advised as to my appeal rights.
2. Unlawfully induced plea.
3. I was told indictments 92-11 and 92-12 would be dismissed if I pled to murder charge.
4. Thirty year parole eligibility violates statute.
5. Counsel failed to withdraw my plea.
6. Counsel did not advise me of the State's case and possibility of jury returning verdict.
7. Armed Robbery indictment is invalid.
8. Counsel failed to have Application submit to a mental competency exam.

Respondent filed its return on February 16, 1996, and an amended return on February 19, 1997. An evidentiary hearing was held at the Beaufort County Courthouse on January 25, 1999. Harry L. Devoe, Esquire, represented Applicant. The Honorable James E. Lockemy denied and dismissed the application with prejudice on July 15, 1999.

Applicant appealed, and the South Carolina Supreme Court denied the petition for writ of certiorari on May 23, 2001. The remittitur was issued on June 8, 2001.

8:01-4090-11

Applicant subsequently filed a pro se federal petition for a writ of habeas corpus on October 23, 2001. Respondent made its return and motion for summary judgment on January 14, 2002. Applicant filed a response to the summary judgment motion on January 28, 2002. The Honorable Bruce H. Hendricks, United States Magistrate Judge, issued a report on May 31, 2002 and recommended that Respondent's motion for summary judgment be granted. The Honorable Falcon B. Hawkins, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition on August 27, 2002.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit. The

Fourth Circuit affirmed the district court's decision on February 25, 2003 and issued its mandate on April 16, 2003.

2002-CP-27-256

Applicant filed a petition for a writ of habeas corpus with the Jasper County Clerk of Court on June 21, 2002. Respondent made its return and motion to dismiss, requesting the case be dismissed because state habeas petitions must be filed in the original jurisdiction of the South Carolina Supreme Court. An evidentiary hearing was convened on July 11, 2003 at the Beaufort County Courthouse. Gerald Kelly, Esquire, represented Applicant. The Honorable Jackson V. Gregory dismissed the petition by order filed October 16, 2003.

Applicant appealed, and following an *Anders*¹ brief, the South Carolina Court of Appeals dismissed the appeal. *Roberson v. State*, Op. No. 2004-UP-627 (S.C. Ct. App. filed Dec. 10, 2004). The Court of Appeals denied Applicant's petition for rehearing on January 20, 2005. The Supreme Court of South Carolina denied his petition for writ of certiorari on May 5, 2005 and issued the remittitur on May 11, 2005. Upon information and belief, Applicant filed another petition for rehearing, which the Supreme Court denied on June 3, 2005.

Applicant subsequently filed a pro se document entitled "Petition for Consideration to Grant Extraordinary Writ in the Courts Original Jurisdiction" on May 19, 2007 with the Supreme Court of South Carolina. The court dismissed the petition on June 7, 2007. Applicant then filed a *pro se* petition for a writ of habeas corpus with the United States Supreme Court. The Court denied the petition on November 13, 2007. *In Re Tyrone Roberson*, Op. No. 07-7222 (U.S. filed Nov. 13, 2007).

¹ *Anders v. California*, 386 U.S. 738 (1967).

2010-CP-07-2070

Applicant filed his second PCR application on April 30, 2010, and amended his application on June 24, 2010. Applicant alleged the following grounds for relief:

1. Ineffective assistance of trial counsel
2. Involuntary guilty plea
3. Sentencing ex post facto violation.
4. Circuit court lacked subject matter jurisdiction.
5. Denial of due process.
6. Newly discovered evidence in that victim and co-defendant were coerced.

Respondent filed its return and motion to dismiss on October 4, 2010. The Honorable Carmen T. Mullen signed the conditional order of dismissal on October 6, 2010. Applicant then submitted a pro se document entitled "Petitioner Motion of Objection to Respondent's Return and Motion to Dismiss and Conditional Order of Dismissal" on October 17, 2010. Judge Mullen signed a final order of dismissal on December 2, 2010.

Applicant appealed the PCR court's decision, and the Supreme Court of South Carolina dismissed the appeal on February 7, 2011. The remittitur was issued on March 3, 2011.

On April 7, 2011, the Supreme Court of South Carolina issued an order directing the Clerk of Court not to accept any further petitions from Applicant unless he pays a filing fee and completes a notarized affidavit certifying that he in good faith believes the matter raised in his petition is nonfrivolous and proper for the Supreme Court to consider in its original jurisdiction. Further, the court advised Applicant that any further frivolous petitions may subject him to contempt or sanctions.

2:11-cv-01486

Applicant filed another federal habeas corpus petition in 2011. On August 9, 2011, Honorable Bruce H. Hendricks, United States Magistrate Judge, recommended the petition be

dismissed. On September 15, 2011, the Honorable Cameron McGowan Currie, United States District Judge, adopted the magistrate's report and dismissed the petition.

Applicant appealed to the United States Court for the Fourth Circuit, and the Fourth Circuit denied the certificate of appealability and dismissed his appeal on February 22, 2012. The mandate was issued on March 15, 2012.

II.

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

1. Plea agreement was taken in violation of applicant involuntary waiver of Miranda warning's custodial interrogation induced statement to compel self-incrimination in violation of U.S.C.A. 5th, U.S.C.A. 14th.
 - i. Petitioner Roberson had a Sixth Amendment constitutional liberty interest to have effective assistance of trial counsel's present during custodial in court questioning to timely object and protect Petitioner's Fifth Amendment rights.

Applicant subsequently filed a pro se "Motion to Amend Supplemental Pleadings Pursuant to SCRCP, Rule 15" on February 27, 2013. In this motion, Applicant alleges the following grounds for relief:

1. Procedural default pursuant to *Martinez v. Ryan*.
2. Newly discovered evidence.
3. Ineffective assistance of an initial-review collateral proceeding on a claim of ineffective assistance at trial.

Applicant subsequently filed a pro se "Petition for Writ of Habeas Corpus Collateral Appeal with Extraordinary Writ of Habeas Corpus in the Original Jurisdiction of the Supreme Court" on March 27, 2014 with the Jasper County Clerk of Court.

Before this Court are the Jasper County Clerk of Court records regarding the subject

convictions, South Carolina Department of Corrections records, Applicant's previous and current PCR applications, and appellate records.

III.

This Court finds this current application must be summarily dismissed because it is successive to Applicant's previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 indicate 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." *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations... could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's contention that he received ineffective assistance of counsel on his prior

post-conviction relief application is not a ground for relief and 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 held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” *Aice*, 305 S.C. at 452, 409 S.E.2d at 395 (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, “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. *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. Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. Further, this Court finds Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous application.

IV.

This Court must also summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2003). South Carolina Code Section 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 held 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 was convicted of the offenses he challenges in his application on October 23, 1992. Applicant did not appeal his plea or sentence. Therefore, Applicant was required to file his PCR application on or before July 1, 1996.² Applicant filed this application on June 11, 2012, more than fifteen years after the statutory filing period 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, South Carolina Code Section 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, this Court summarily dismisses this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Further, this Court finds no merit to the allegation of ineffective assistance of prior collateral counsel. Applicant contends *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) excuses procedural default created by the errors of trial and PCR counsel. Applicant's contention is without merit because the ruling in *Martinez* has no bearing on his ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, *Martinez* sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See *Coleman*, 501 U.S. at 750 ("In all cases in which a state prisoner has defaulted his federal claims

² Section 17-27-45(A) of the South Carolina Code was enacted on July 1, 1995. *Peloquin* held "all those convicted prior to the effective date of the statute should be allowed one year after its effective date to file an application." *Peloquin*, 321 S.C. at 470, 469 S.E.2d at 606. Therefore, *Peloquin* required Applicant to file his PCR application by July 1, 1996.

in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.”). The *Martinez* Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient “cause” to excuse a prisoner’s procedural default in a federal habeas corpus proceeding. See *Martinez*, 132 S. Ct. at 1314 (“Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.”).

Martinez has no application to successive state PCR actions, as the fundamental “cause and prejudice” standard on which *Martinez* relies is exclusive to federal habeas corpus actions. Further, the *Martinez* Court specifically noted that their decision was not addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining “This is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” *Id.*

Additionally, *Martinez’s* interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its PCR statutes. S.C. Code Ann. § 17-27-10 to 160. Therefore, the South Carolina Supreme Court’s opinion in *Aice v. State* is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See *Aice*, 305 S.C. at 451, 409 S.E.2d at 394 (“The contention that prior PCR counsel was ineffective is not *per se* a sufficient reason warranting a successive PCR application under 17-27-90.”) The South Carolina Supreme Court

recognized “The holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” *Kelly v. State*, 404 S.C. 365, 745 S.E.2d 377 (2013).. Applicant’s contention that *Martinez* allows him to bring this untimely and successive state PCR application is misguided and erroneous.

VI.

Finally, this Court finds Applicant’s claim of newly discovered evidence is extremely vague and fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. A newly discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. S.C. Code Ann. § 17-27-45(c) (2003). Applicant failed to set forth with any specificity what the evidence is, how it would have affected the outcome if used at trial, or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant failed to make a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, is not entitled to an evidentiary hearing in the matter.

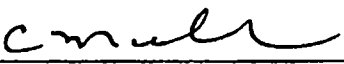
VII.

Pursuant to Section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final.

Applicant shall file any reasons he may have with the Jasper County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 8 day of Oct, 2014.


CARMEN T. MULLEN
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

Tyrone L. Roberson, #191327)

2012-CP-27-0376)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

JASPER COUNTY

2017 JUN 31 AM 9:35

FILED

FINAL ORDER

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SC Court of Appeals S.C. SUPREME COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 11, 2012. In its Return and Motion to Dismiss, the Respondent requested that the Application be summarily dismissed pursuant to S.C. Code Ann. § 17-27-70 on the basis there was no genuine issue of material fact which would necessitate an evidentiary hearing. 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 dated October 16, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 30, 2014, serving the above-mentioned Conditional Order of Dismissal.

The Applicant made no response to the Conditional Order of Dismissal. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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

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TYRONE L. ROBERSON, #191327,

Applicant **SC Court of Appeals**

v.

STATE OF SOUTH CAROLINA,

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Respondent.

MAY 26 2017

CERTIFICATE OF SERVICE

S.C. SUPREME COURT

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Tyrone L. Roberson, #191327
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472-0205**

This 6th day of February, 2017.



RUSTON W. NEELY
ATTORNEY FOR RESPONDENT

SWORN to before me this this 6th day of February, 2017.



Notary Public for South Carolina.

My Commission Expires: 12/16/2024



ALAN WILSON
ATTORNEY GENERAL

February 6, 2017

Tyrone L. Roberson, #191327
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472-0205

Re: Tyrone L. Roberson, #191327 v. State of South Carolina
2012-CP-27-376

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S.C. SUPREME COURT

Dear Mr. Roberson:

Enclosed is a copy of the **Final Order of Dismissal** signed by the Honorable Carmen T. Mullen and filed with the Jasper County Clerk of Court.

Sincerely,

Ruston W. Neely
Assistant Attorney General

RWN/jyb

Enclosure

Case # 19-13717
Motion

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