

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
SCDC. No. 231663.

V.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR FIFTH JUDICIAL CIRCUIT  
CASE No. 2015-CP-NO. 02382

Notice of APPEAL.

FROM RICHLAND COUNTY

L. CASEY MANNING, Judge

APPLICANT has file notice  
OF APPEAL in the SUPREME  
COURT. STATE OF SOUTH CAROLINA  
OF the FINAL ORDER OF dismissal.  
ENCLOSING A COPY has been ~~to~~  
MAILED to

Jessica E. Kinard  
ASSISTANT ATTORNEY GENERAL  
SC. ATTORNEY GENERAL OFFICE  
Post office box 11549  
Columbia, SC 29211-1549

7-11-2017

cc:

Jessica E. Kinard

Sincerely,

Frank Furtick, 231663

**RECEIVED**

JUL 17 2017

S.C. SUPREME COURT

STATE OF South CAROLINA  
IN the SUPREME COURT

---

CERTIORARI to Richland County  
COURT of common Pleas

The HONORABLE L. Casey Manning,  
Circuit Court Judge

---

CASE NO: 2015-CP-410-02382

FRANK Furtick \_\_\_\_\_ APPLICANT.  
SCDC. No: 231663

V.

STATE OF South CAROLINA \_\_\_\_\_ Defendant

July 11, 2017

Frank Furtick

cc:

SCDC. No. 231663

FLB. 2235

Lee CORRECTIONAL institution

990 WISACKY HWY

bishopville, SC 29010

Jessica E. Kinard  
Assistant Attorney  
GENERAL

RECEIVED

JUL 17 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICH, APPLICANT.  
S.C.D.C. No. 231663  
U.

STATE OF SOUTH CAROLINA  
DEFENDANT.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE No. 2017 CP-40-02382

APPEAL TO PROPOSED  
FINAL ORDER OF DISMISSAL

~~Defendant~~ RESPONDENT MADE ITS  
RETURN AND MOTION TO DISMISS  
ON OR ABOUT APRIL 20, 2016,  
REQUESTING THE APPLICATIONS  
BE SUMMARILY DISMISSED BASED ON  
SUCCESSIVENESS OF APPLICATION, EXPIRATION  
OF STATUTE OF LIMITATIONS.  
APPLICANT RECEIVED COPY OF THE  
AFFIDAVIT OF SERVICE FOR THE  
CONDITIONAL ORDER OF DISMISSAL  
JULY-10-2017

7-11-2017

**RECEIVED**  
JUL 17 2017  
S.C. SUPREME COURT

Frank Furtich 231663

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
S.C.D.C. NO. 231663.

V.

STATE OF SOUTH CAROLINA

Defendant.

in the court of Common Pleas  
for the fifth Judicial Circuit  
CASE NO. 2015-CP-40-02382

APPEAL TO PROPOSED FINAL  
ORDER OF DISMISSAL

APPLICANA come before this court  
to answer the defendant proposed  
final order of dismissal.

APPLICANA would respectfully show  
this honorable court that, among  
other things, the statute of limitation  
does not apply in this case.

where a defendant is denied a  
direct appeal due to ineffective  
assistance of counsel. This is not  
so much an exception to the statute  
of limitation, but rather a special  
situation in which the statute of  
limitation does not apply. Code, 1976-  
17-27-45/A/ due to ineffective  
assistance of counsel.

Wilson v. State, 348 S.C. 215, 559 S.E.2d 58,  
(2002).

1

RECEIVED

JUL 17 2017

S.C. SUPREME COURT

STATE OF South CAROLINA

COUNTY OF RICHLAND

FRANK FURTICK, APPLICANT

S.C.D.C. No. 231663.

V.

STATE OF South CAROLINA

Defendant.

in the Court of common Pleas

for the fifth Judicial Circuit

CASE No: 2015-CP-UC-02382

APPEAL To PROPOSED FINAL  
ORDER of Dismissal

TRIAL Judge deprived APPLICANT

due Process, by having communication  
with DELIBERATING JURY by notes.

Not done in open court. it Violated  
my Right to due Process.

Also Rule 43(A) Fed. Rule Crim. P. 43(A).  
U.S. vs. Neff. 10 F. 3d 1821. it Also

Violated Article 1. section 18, of the  
Constitution of This State, requiring

Criminal Prosecutions to be Public. (b)  
The defendant was entitled to be  
Cognizant of EVERY stage, step and  
progress of his trial, (c) The defendant  
is not required to hear at second hand  
ANY PART OR PROCEEDING OF his TRIAL.  
STATE U. ROWELL 75 S.C. 494, 56 S.E. 23: 1906.  
SUPREME COURT OF South CAROLINA.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
S.C.D.C. NO. 231663.

V.

STATE OF SOUTH CAROLINA

Defendant

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-40-02382

APPEAL TO PROPOSED FINAL  
ORDER OF DISMISSAL

TRIAL COUNSEL DEPRIVED APPLICANT  
OF DUE PROCESS BY ADMITTED  
THE APPLICANT GUILTY TO THE  
JURY DURING OPEN AND CLOSING  
ARGUMENT WITHOUT THE DEFENDANT  
CONSENT. A DEFENDANT'S RIGHT TO PLEAD  
NOT GUILTY HAS BEEN CAREFULLY  
GUARDED BY THE COURTS. SEE WILEY  
V. SOWDERS, 647 F.2D 642 (6TH CIR. 1981).  
WHEN A DEFENDANT ENTERS A PLEA OF  
NOT GUILTY, HE PRESERVES TWO FUNDAMEN-  
TAL RIGHTS. FIRST HE PRESERVES  
THE RIGHT TO A FAIR TRIAL AS  
PROVIDED BY THE SIXTH AMENDMENT.  
SECOND, HE PRESERVES THE RIGHT TO  
HOLD THE GOVERNMENT TO PROOF  
BEYOND A REASONABLE DOUBT.  
WILEY, 647 F.2D AT 650.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
S.C.D.C. NO. 231663,  
V.  
STATE OF SOUTH CAROLINA

Defendant

in the court of Common Plea  
For the Fifth Judicial Circuit  
CASE No: 2015-CP-UG-02382

APPEAL TO PROPOSED FINAL  
ORDER OF DISMISSAL

TRIAL COUNSEL DEPRIVED APPLICANT  
OF DUE PROCESS CLAUSE OF THE 14  
AMENDMENT GUARANTEES EFFECTIVE  
ASSISTANCE OF COUNSEL ON HIS FIRST  
APPEAL. AS OF RIGHT. APPLICANT STATED  
THAT HIS CONVICTION WAS UNCONSTITUTIONAL  
IN SUPREME COURT OF SOUTH CAROLINA  
STATE, THE RIGHT OF AN ACCUSED IN A  
CRIMINAL PROSECUTION TO THE ASSISTANCE OF  
COUNSEL UNDER THE SIXTH AMENDMENT TO THE  
CONSTITUTION OF THE UNITED STATES IS MADE  
OBLIGATORY UPON THE STATES BY THE 14  
AMENDMENT. THE EFFECTIVE ASSISTANCE OF  
COUNSEL IS A NECESSARY REQUISITE OF THE  
DUE PROCESS OF LAW. STATE V. COWART. 251 S.C. 360. 162  
S.E. 2d 535.

ROGERS V. STATE. 199 S.E.2d 761  
SC: SUPREME COURT 1973

U. ~~ADAMS~~

STATE OF South CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
S.C.D.C. NO: 231663.

V.  
STATE OF South CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO: 2015-CP-40-02382

APPEAL TO PROPOSED FINAL  
ORDER OF DISMISSAL

THE APPLICANT STATED THAT  
UNDER THE UNIFORM POST  
CONVICTION PROCEDURE ACT,  
SECTION 17-601 OF THE  
CODE WHICH IS AVAILABLE TO:

(A) ANY PERSON WHO HAS BEEN  
CONVICTED OF OR SENTENCED  
FOR A CRIME AND WHO CLAIMS.

(1) THAT THE CONVICTION OR THE  
SENTENCE WAS IN VIOLATION OF  
CONSTITUTION OF THE UNITED STATES  
OR THE CONSTITUTION OR LAWS OF THIS  
STATE:

ROGERS, V. STATE. 199 SE 28761  
SC: SUPREME COURT 1973.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTIK, APPLICANT  
S.C.D.C. NO. 231663.

V.

STATE OF SOUTH CAROLINA

DEFENDANT

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO: 2015-CP-40-02382

APPEAL TO PROPOSED FINAL  
ORDER OF DISMISSAL

IN THE APPLICANT FIRST PCR  
APPLICATION THESE GROUNDS  
WAS NOT AVAILABLE TO THE  
APPLICANT AT THE TIME,  
THE APPLICANT DID NOT  
HAVE A TRIAL TRANSCRIPT  
APPLICANT DID NOT KNOW THAT  
THEY EXIST, APPLICANT RECEIVE  
HIS TRIAL TRANSCRIPT ON JUNE  
23, 2011 FROM DIVISION OF APPELLATE  
DEFENSE, APPELLATE COUNSEL WANDA H.  
CARTER. KNEW ABOUT THEM AND FAILED  
TO FILED MY ISSUES. APPLICANT STATED  
HE DID NOT WAIVER ANY ISSUE HE WAS  
DEPRIVE OF ONE BITE OF THE APPLE

STATE of South CAROLINA  
County of Richland  
FRANK FURTICK, APPLICANT.  
S.C.D.C. No: 231663,

IN the Court of Common Pleas  
FOR the Fifth Judicial Circuit  
CASE No: 2015-CP-40-02382

STATE OF SOUTH CAROLINA

Defendant

### I. PROCEDURAL HISTORY

The APPLICANT is Presently House in the Lee Correctional Institution, of the South Carolina Department of Corrections (SCDC). AS THE RESULT of his Richland County Convictions and sentence of life without PAROLE (LWOP). The Richland County GRAND JURY indicted APPLICANT in JUNE 2006 FOR ONE Count of MURDER (2006-GS-40-3911); 3 Count of KIDNAPPING (2006-GS-40-3568-3572-N-3574); 2 Count of ASSAULT AND battery of a high AND AGGRAVATED NATURE (ABHAM) 2006-GS-40-3575-N-3576). A Count of GRAND LARCENY (2006-GS-40-3567; AND 2 Count of ARMED ROBBERY (2006-GS-40-3569-N-3573). DANIELLE PAYNE AND Lauren Mobley, of the Richland County Public Defender's office, REPRESENTED him on these CHARGES. APPLICANT did NOT ENJOY THE benefit of A direct APPEAL in the CASE.

STATE OF South CAROLINA  
COUNTY OF Richland  
FRANK FURTICK, APPLICANT.  
S.C.D.C. No. 231663,

v.

STATE OF South CAROLINA

Defendant

IN the Court of Common Pleas  
FOR the Fifth Judicial Circuit  
CASE No: 2015-CP-40-02382

## 2: PROCEDURAL HISTORY

on October 22-25, 2007, APPLICANT received A JURY TRIAL on all of these charges before HONORABLE G. THOMAS COOPER, JR, EXCEPT FOR THE Count of GRAND LARCENY AND the kidnaping Count in 2006-GS-40-3572 which WERE Nolle Prossed. The JURY found APPLICANT guilty of the ARMED ROBBERY of Louise Dodds (2006-GS-40-3569), guilty of kidnaping Louise Dodds (2006-GS-40-3568), guilty of murdering Louise Dodds (2006-GS-40-3911), guilty of the ARMED ROBBERY of BARBARA MARLOW AND/OR the Pitt Stop (2006-GS-40-3573), guilty of ABHIAN of BARBARA MARLOW (2006-GS-40-3576), AND guilty of ABHIAN of LISA HARRELL (2006-GS-40-3575). THE JURY found APPLICANT Not guilty of kidnaping BARBARA MARLOW, Connie Colburn AND LISA HARRELL (2006-GS-40-3574).

STATE OF SOUTH CAROLINA  
COUNT OF RICHLAND  
FRANK FURTICK, APPLICANT  
SCDC NO. 231663,  
V.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-40-02382

STATE OF SOUTH CAROLINA  
  
DEFENDANT.

### 3 PROCEDURAL HISTORY

Judge Cooper sentenced Applicant to life imprisonment without the possibility of parole for murdering Louise Dods. Judge Cooper also sentenced Applicant to ten years on the two ABHAM conviction (2006-GS-40-3575 N-3576 AND 30 years for the 2 Armed Robbery convictions (2006-GS-40-3569 N-3573). Applicant did not appeal his conviction or his sentence.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
SCDC. NO. 231663.

V.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO: 2015-CP-40-02382

Statement

ON JULY 7, 2008) APPLICANT FILED

A PCR APPLICATION WITH THE  
RICHLAND COUNTY CLERK OF COURT.

A MOTION HEARING WAS CONVENED ON

APRIL 1, 2009, AT THE RICHLAND  
COUNTY GENERAL SESSIONS COURT BEFORE

JUDGE L. CASEY MANNING. DURING THE  
HEARING TARA DAWN SHURLING STATED TO

JUDGE MANNING THAT HER ABILITY TO  
EFFECTIVELY COMMUNICATE WITH THIS  
CLIENT HAD SERIOUSLY DETERIORATED.

JUDGE MANNING GRANTED COUNSEL MOTION.  
AND THEN HE SAID IT IS THEREFORE

ORDERED THAT THE RICHLAND COUNTY CLERK  
OF COURT IS HEREBY DIRECTED TO APPOINT

COUNSEL FOR THE APPLICANT. CASE NO: 08-  
CP-40-4869.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
FRANK FURTICK, APPLICANT  
SCDC. NO. 231663.

V.

STATE OF SOUTH CAROLINA

Defendant.

in the COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-40-02382

STATEMENT CONTINUE

A ATTORNEY GENERAL PETRANO STATED THAT THE APPLICANT WAS REPRESENTED AT THE PCR HEARING BY TARA DAWN SHURLING. APPLICANT TRIAL COUNSEL WAS NOT PRESENT, IF IT WAS A BELATED DIRECT APPEAL HEARING SHE SHOULD BEEN THERE, APPLICANT STATED IF HE WERE REPRESENTED THEN HIS ATTORNEY WOULD HAVE AMENDED HIS APPLICATION. RULE 5. WHICH PLACE UPON COUNSEL DUTY TO ASCERTAIN FROM APPLICANT WHETHER HE HAS INCLUDED ALL GROUND KNOWN TO HIM, AND AMEND THE APPLICATION TO INCLUDE ANY CLAIMS NOT ALREADY INCLUDED.

31653

Inst  
wy  
9010



THE SUPREME COURT OF  
SOUTH CAROLINA. DANIEL E. SHEAROUSE,  
CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, SC 29211

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4002382

Frank #271663 Furtick

State of South Carolina

PLAINTIFF(S)

Alan Wilson

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. Nonstat);  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 3 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Frank #271663 Furtick

James Clayton Mitchell III

Frank #271663 Furtick

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court

*Jeanette W. Yarbrough*

SCANNED

ATTORNEY GENERAL'S OFFICE

RECEIVED 5.6.16

ADMINISTRATIVE INSTRUCTIONS

FILE \_\_\_\_\_ OPEN \_\_\_\_\_ END \_\_\_\_\_

HAVE \_\_\_\_\_ COPIES MADE

ROUTE TO \_\_\_\_\_

ORDER: \_\_\_\_\_ TRANSCRIPT

PEN RECORDS \_\_\_\_\_ CLERK RECORDS

OTHER: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Frank Furtick, #231663,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2015-CP-40-02382

CONDITIONAL ORDER OF DISMISSAL

2016 MAR 2 AM 11:13  
JEANETTE W. MCBRIDE  
C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter comes before this Court by way of an application for post-conviction relief filed April 17, 2015.

#### I. PROCEDURAL HISTORY

The Applicant is presently confined in the Lee Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result of his Richland County convictions and sentence of life without parole (LWOP). The Richland County Grand Jury indicted Applicant in June 2006 for one count of murder (2006-GS-40-3911); three counts of kidnapping (2006-GS-40-3568, -3572 & -3574); two counts of assault and battery of a high and aggravated nature (ABHAN) (2006-GS-40-3575 & -3576); a count of grand larceny (2006-GS-40-3567); and two counts of armed robbery (2006-GS-40-3569 & -3573). Danielle Payne and Lauren Mobley, of the Richland County Public Defender's Office, represented him on these charges.

On October 22-25, 2007, Applicant received a jury trial on all of these charges before the Honorable G. Thomas Cooper, Jr., except for the count of grand larceny and the kidnapping count in 2006-GS-40-3572 which were *nolle prossed*. The jury found him guilty of the armed robbery of Louise Dodds (2006-GS-40-3569); guilty of kidnapping Ms. Dodds (2006-GS-40-3568); guilty of murdering Ms. Dodds (2006-GS-40-3911); guilty of the armed robbery of Barbara Marlow and/or the Pitt Stop (2006-GS-40-3573); guilty of ABHAN of Barbara Marlow

(2006-GS-40-3576); and guilty of ABHAN of Lisa Harrell (2006-GS-40-3575). The jury found him not guilty of kidnapping Ms. Marlow, Connie Colburn and Lisa Harrell (2006 GS 40 3574).

Judge Cooper sentenced Applicant to LWOP for murdering Ms. Dodds. Judge Cooper also sentenced him to ten years imprisonment on the two ABHAN convictions (2006-GS-40-3575 & -3576) and to thirty years imprisonment for the two armed robbery convictions (2006-GS-40-3569 & -3573). Applicant did not appeal his convictions or his sentence.

**2008-CP-40-04869**

Applicant subsequently filed a *pro se* application for post-conviction relief on July 7, 2008, where he alleged he was being held unlawfully for the following reasons:

1. [Ineffective assistance of counsel for not perfecting a direct appeal.]  
Counsel failed to file an appeal from conviction
2. Will amend at a later date 5 issues or less.

Respondent filed its Return on or about March 4, 2009. An evidentiary hearing was convened before the Honorable L. Casey Manning on April 1, 2009, at the Richland County Courthouse. Applicant was present and represented by counsel Tara D. Shurling, Esquire. The State was represented by Assistant Attorney General Brian T. Petrano. Both Ms. Shurling and Applicant moved to have her relieved and a new PCR attorney appointed, and counsel for the State indicated the State's willingness to consent to the belated direct appeal because that was the only specific allegation in Furtick's Application.

Judge Manning ordered that Ms. Shurling be relieved and that new counsel be appointed. Judge Manning also explained that, if Applicant proceeded, the only issue that would be addressed was trial counsel's ineffectiveness for failing to perfect a direct appeal and that all other issues would be waived. Applicant stated that he understood and that he wished to proceed.

---

Attorney Charlie J. Johnson, Jr., of the Richland County Bar was appointed by the Clerk on August 26, 2009.

On April 26, 2010, Judge Manning filed a Consent Order Granting Belated Direct Appeal, in which he (1) "granted a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974);" instructed collateral counsel to file a notice of appeal within thirty days of the date of the Order, so as to obtain appellate of trial court errors under *White v. State*; and (3) found that Applicant "has waived his right to raise any other PCR allegations."

Applicant, through Mark Schnee, Esquire, filed a Motion to Reconsider Order Granting Belated Appeal, in which he asserted that he did "not wish to waive his right to raise other PCR grounds after the belated direct appeal process is complete." The State moved to dismiss this pleading on May 25, 2010. Judge Manning filed a Form 4 Order denying the motion to reconsider on August 2, 2010.

Applicant timely served and filed a notice of appeal. Deputy Chief Appellate Defender Wanda H. Carter represented him in collateral appellate proceedings. On April 6, 2011, Applicant - through Ms. Carter - filed a Petition for Writ of Certiorari, in which the Question Presented was stated as follows:

The PCR Court properly ruled that petitioner did not voluntarily and intelligently waive his right to a direct appeal in the ease.

On June 20, 2010, Applicant filed a Brief of Appellant Pursuant to *White v. State*, in which the Issues on Appeal were stated as follows:

1. The trial judge erred in denying counsel's motion to suppress appellant's statement given to police since it was obtained in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981), because appellant gave several answers indicating that he desired counsel's presence during the custodial interrogation in question.
2. The trial judge erred in failing to direct a verdict of acquittal on one of the state's armed robbery charges against him in the case because the beer can found at that particular crime scene did not qualify as a deadly weapon.

The State filed a Return to Petition for Writ of Certiorari on August 4, 2011. The State filed a Brief of Respondent (Pursuant to White v. State) on August 5, 2011.

On November 7, 2012, the South Carolina Supreme Court filed an Opinion granting certiorari on the White v. State claim that Applicant was entitled to a belated appeal and, following its review of the two issues presented, it affirmed his convictions and sentence. It sent the Remittitur to the Richland County Clerk of Court on November 27, 2012.

**8:13-cv-00079-MGL-JDA**

Applicant subsequently filed a *pro se* Petition for writ of habeas corpus in the United States District Court for the District of South Carolina on January 2, 2013. Applicant raised the following issues:

**GROUND ONE:** A beer can is not a deadly weapon

**SUPPORTING FACTS:** [1.] A [beer] can [doesn't] qualify as a deadly weapon. [2.] Trial judge having private [communications] with deliberating jury by notes. Not done in open court.

**GROUND TWO:** Petitioner did not voluntarily [and] intelligently waive his right to [a] direct appeal.

**SUPPORTING FACTS:** [1.] I have a right to appeal. [2.] I told my appeal counsel [but] she did not raise the issue.

**GROUND THREE:** Trial judge erred in denying motion to [suppress] statement.

**SUPPORTING FACTS:** [1.] I gave several answers indicating that I want[ed] counsel [present] during interrogation. [2.] Trial lawyer fail[ed] to interview[] witnesses from police report listed. [3.] Trial lawyer fail[ed] to motion for victim's medical records.

**GROUND FOUR:** The [was] no evidence to support the murder charge.

**SUPPORTING FACTS:** [1.][The] State failed to prove element of murder. The pathologist [said] she die[d] from cardiac arrest due to complications of beating. And the pathologist also [said] she [developed] a blood clot that move[d] into her lungs and cause[d] cardiac arrest. [2.] Trial lawyer told jury defendant was guilt[y].

Subsequently, Applicant filed an "Open Statement" on February 25, 2013 in which he asserts the following, additional claims:

- A. [The trial judge violated my rights to due process and equal protection and my sixth amendment right to a fair and impartial trial].
- B. [Ineffective Assistance of Counsel].
  - 1. Trial counsel was ineffective for not impeaching conflict witness statement at trial.
  - 2. Trial counsel [was] ineffective for not [filing] notice of appeal as required by Rule 203 S.C.A.C.R.
  - 3. Trial counsel [was] ineffective for saying that her client was not innocent during open[ing] argument and closing argument without the consent of the defendant.
- C. Trial judge violate[d] defendant's right to be present at all stages of the proceeding[s] by having private [communication] with [deliberating] jury by notes that [mere] not done in open court. Rule 43(A) Fed. Rule Crim P. 43 (A). U.S. vs. Neff, 10 F. 3d 1821.
- D. Trial judge erred in [failing] to give a directed verdict of acquittal on murder charges].
- E. [The] State failed to prove the deadly weapon element on the armed robbery charge because a beer does not constitute a deadly weapon. Failure to grant a directed verdict on this armed robbery charge offense violated Appellant's Fourteenth Amendment right to due process which required the prosecution to prove every element of the offense charged beyond a reasonable doubt.
- F. The trial judge erred in denying counsel's motion to suppress Appellant['s] statement given to police since it was obtained in violation of McNeil v. Wisconsin, 501 U.S. 171 (1991). Also see Minnick v. Mississippi, 498 U.S. 146(,) 111 Sct 486[,] 112 L, Ed. 2d 489 (1991). Edwards v. Arizona, 451 U.S. at 484\_ 485[,] 101 Sct. At 1884-1885. Also see statement of Frank Furtick.
- G. Trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery charges against him at the Pitt Stop store on

Farrow Road. Nicolette Pittman testified that the man had a gun in [his] pants: with shirt tucked in his pants. She also say[s] that the gun was on his side and it had a black handle. See Nicolette Pittman's statement on page 152. A: 16, A. 17, Q. 21, A. 22, Q. 23, A. 24.

H. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery charges against him at the Pitt [Stop] Store on Farrow Road. LaShawn Hessel [testified] that she noticed he ha[d] a gun handle that's sticking out the right side of his pocket. She also [said] it's a black handle that was sticking out [of] his right pocket. See Trial Transcript and Lashawn Hessel testimony on p. 397. 1.A. Q. 7. 9.A.

I. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the assault and battery and armed robbery of Barbara Marlow. Stated that she was hit in her chest but did not go to the hospital [or] call EMS: [B]arbara Marlow [testified] that Lashawn [said] Ms. Barbara he got a gun. She never [testified] that she saw a gun, and see her testimony on p. 416, line 24.

J. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery and assault and battery of a high and aggravated nature on Barbara Marlow and Lisa Harrell neither one of them went to the hospital. Lisa Harrell testified that he did have a bulge in his pants that looked like it could have been a gun at all times. See her testimony on p. 408. 19. A, 20 A, 21.A.

K. The kidnapping charge, I would argue that this cannot be submitted to the jury along with the armed robbery charge or the strong armed robbery charge, however Your Honor intends to Rule on that, as it would be a double jeopardy issued. Your Honor, it is the same conduct. She is the kidnapping statute, I understand it's very broad, but there also needs to be some sort of conduct to qualify for kidnapping outside of the conduct that they are contending is the murder and/or the armed robbery.

L. On July 7, Petitioner filed a PCR application with the Richland County office of the Clerk of Court. A belated direct appeal hearing was not held on April 1, 2009. At the Richland County General Sessions Court. That was a motion hearing to have Tara Dawn Shurling removed as counsel because I filed a grievance against her with the office of Disciplinary counsel. Judge Manning granted the motion on April 1, 2009. I was not represented at that hearing. It was a motion hearing to relieve Tara Dawn Shurling as counsel. I did not get one fair bite of the apple. Every defendant has a right to file a direct appeal and one PCR application. Brian T. Petrano, Assistant Attorney General. Mislead the court when he say that the applicant has waived his right to raise any other PCR allegations at hearing. He also stated at the PCR hearing the Respondent consented to a belated direct appeal because their interview of trial counsel indicated that applicant did request an appeal and due to a clerical error a notice

of appeal was not properly filed, and at the PCR hearing the applicant expressed his satisfaction and was not concerned with presenting any amendment to his application. The attorney general, Brian T. Petrano committing prejudice to bias the mind of the court.

On June 7, 2013, Respondent filed a motion for summary judgment and a return and memorandum. The federal district court granted Respondent's motion for summary judgment by Order dated March 19, 2014, finding the Applicant's claims were without merit.

Applicant timely served and filed a notice of appeal. The Fourth Circuit Court of Appeals denied Applicant's appeal on September 3, 2014, stating that there was no "substantial showing of a denial of a constitutional right."

**2014-000715**

Applicant subsequently filed a petition for a writ of certiorari with the Supreme Court of South Carolina which was dismissed on April 11, 2014 for incorrectly filing proof of service.

### **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. Trial Judge deprived petitioner due process
2. Trial counsel deprived petitioner due process
3. Petitioner conviction was unconstitutional
4. Belated conviction application
5. *White v. State*, 208 S.E.2d 35
6. *Austin v. State*, 409 S.E.2d 395

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).

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 October 25, 2007. The Applicant did not appeal his conviction or sentence, so he was therefore required to file his application on or before October 27, 2008. This application was filed on April 17, 2015, which was more than six (6) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

### Res Judicata


This Court further finds that the doctrine of *res judicata* bars the Applicant's claims of entitlement to White v. State relief. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. The Applicant has raised issues of White v. State before the South Carolina Supreme Court, which affirmed the conviction. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, this Court finds that these claims are barred by *res judicata*.

### 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  
Julie A. Coleman, Esquire  
PCR Division – 5<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 28<sup>th</sup> day of April, 2016.

  
The Honorable Alison Renee Lee  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Frank Furtick, )  
S.C.D.C. No. 231663, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
 )  
Defendant. )  
 )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-02382

**FINAL ORDER OF DISMISSAL**

2017 JUL 14 PM 2:09  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter comes before the Court by way of an application for post-conviction relief filed by Frank Furtick (“Applicant”) on April 17, 2015 (“the Application”). Respondent made its return and motion to dismiss on or about April 20, 2016, requesting the Application be summarily dismissed based on successiveness of application, expiration of statute of limitations, and the doctrine of *res judicata*.

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 April 28, 2016 and filed May 2, 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 an affidavit of service dated June 6, 2016, serving the aforementioned conditional order of dismissal on the Applicant. Respondent received several objections to the conditional order of dismissal from the Applicant dated on or about May 3, 2016 and June 9, 2016.

## I. PROCEDURAL HISTORY

The Applicant is presently confined in the Lee Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result of his Richland County convictions and sentence of life without parole (LWOP). The Richland County Grand Jury indicted Applicant in June 2006 for one count of murder (2006-GS-40-3911); three counts of kidnapping (2006-GS-40-3568, -3572 & -3574); two counts of assault and battery of a high and aggravated nature (ABHAN) (2006-GS-40-3575 & -3576); a count of grand larceny (2006-GS-40-3567); and two counts of armed robbery (2006-GS-40-3569 & -3573). Danielle Payne and Lauren Mobley, Esquires, of the Richland County Public Defender's Office, represented him on these charges.

On October 22-25, 2007, Applicant received a jury trial on all of these charges before the Honorable G. Thomas Cooper, Jr., except for the count of grand larceny and the kidnapping count in 2006-GS-40-3572 which were *nolle prossed*. The jury found him guilty of the armed robbery of Louise Dodds (2006-GS-40-3569); guilty of kidnapping Ms. Dodds (2006-GS-40-3568); guilty of murdering Ms. Dodds (2006-GS-40-3911); guilty of the armed robbery of Barbara Marlow and/or the Pitt Stop (2006-GS-40-3573); guilty of ABHAN of Barbara Marlow (2006-GS-40-3576); and guilty of ABHAN of Lisa Harrell (2006-GS-40-3575). The jury found him not guilty of kidnapping Ms. Marlow, Connie Colburn, and Lisa Harrell (2006 GS 40 3574).

Judge Cooper sentenced Applicant to life imprisonment without the possibility of parole for murdering Ms. Dodds. Judge Cooper also sentenced him to ten years' imprisonment on the two ABHAN convictions (2006-GS-40-3575 & -3576) and to thirty years' imprisonment for the two armed robbery convictions (2006-GS-40-3569 & -3573). Applicant did not appeal his convictions or his sentence.

2008-CP-40-04869

Applicant subsequently filed a *pro se* application for post-conviction relief on July 7, 2008, where he alleged he was being held unlawfully for the following reasons:

1. [Ineffective assistance of counsel for not perfecting a direct appeal.]  
Counsel failed to file an appeal from conviction
2. Will amend at a later date 5 issues or less.

Respondent filed its Return on or about March 4, 2009. An evidentiary hearing was convened before the Honorable L. Casey Manning on April 1, 2009, at the Richland County Courthouse. Applicant was present and represented by counsel Tara D. Shurling, Esquire. The State was represented by Assistant Attorney General Brian T. Petrano. Both Ms. Shurling and Applicant moved to have her relieved and a new PCR attorney appointed, and counsel for the State indicated the State's willingness to consent to the belated direct appeal because that was the only specific allegation in Furtick's application.

Judge Manning ordered that Ms. Shurling be relieved and that new counsel be appointed. Judge Manning also explained that, if Applicant proceeded, the only issue that would be addressed was trial counsel's ineffectiveness for failing to perfect a direct appeal and that all other issues would be waived. Applicant stated that he understood and that he wished to proceed. Attorney Charlie J. Johnson, Jr., Esquire of the Richland County Bar was appointed by the Clerk on August 26, 2009.

On April 26, 2010, Judge Manning signed a consent order granting belated direct appeal, in which he (1) "granted a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974);" instructed collateral counsel to file a notice of appeal within thirty days of the date of the order, so as to obtain appellate of trial court errors under White v. State; and (3) found that Applicant "has waived his right to raise any other PCR allegations."

Applicant, through Mark Schnee, Esquire, filed a motion to reconsider order granting belated appeal, in which he asserted that he did “not wish to waive his right to raise other PCR grounds after the belated direct appeal process is complete.” The State moved to dismiss this pleading on May 25, 2010. Judge Manning filed a Form 4 order denying the motion to reconsider on August 2, 2010.

Applicant timely served and filed a notice of appeal by and through Mr. Schnee on August 20, 2010. Deputy Chief Appellate Defender Wanda H. Carter represented him in collateral appellate proceedings. On June 20, 2011, Applicant - through Ms. Carter - filed a petition for writ of certiorari, along with his brief pursuant to *White v. State*. The State filed a return to petition for writ of certiorari on August 4, 2011, along with a brief of respondent (pursuant to *White v. State*) on August 5, 2011.

On November 7, 2012, the South Carolina Supreme Court filed an opinion granting certiorari on the *White v. State* claim that Applicant was entitled to a belated appeal and, following its review of the two issues presented, it affirmed his convictions and sentence. It sent the remittitur to the Richland County Clerk of Court on November 27, 2012.

**8:13-cv-00079-MGL-JDA**

Applicant subsequently filed a *pro se* petition for writ of habeas corpus in the United States District Court for the District of South Carolina on January 2, 2013. Applicant raised the following issues:

**GROUND ONE:** A beer can is not a deadly weapon

**SUPPORTING FACTS:** [1.] A [beer] can [doesn't] qualify as a deadly weapon. [2.] Trial judge having private [communications] with deliberating jury by notes. Not done in open court.

**GROUND TWO:** Petitioner did not voluntarily [and] intelligently waive his right to [a] direct appeal.

**SUPPORTING FACTS:** [1.] I have a right to appeal. [2.] I told my appeal counsel [but] she did not raise the issue.

**GROUND THREE:** Trial judge erred in denying motion to [suppress] statement.

**SUPPORTING FACTS:** [1.] I gave several answers indicating that I want[ed] counsel [present] during interrogation. [2.] Trial lawyer fail[ed] to interview[] witnesses from police report listed. [3.] Trial lawyer fail[ed] to motion for victim's medical records.

**GROUND FOUR:** The [was] no evidence to support the murder charge.

**SUPPORTING FACTS:** [1.][The] State failed to prove element of murder. The pathologist [said] she die[d] from cardiac arrest due to complications of beating. And the pathologist also [said] she [developed] a blood clot that move[d] into her lungs and cause[d] cardiac arrest. [2.] Trial lawyer told jury defendant was guilt[y].

Subsequently, Applicant filed an "Open Statement" on February 25, 2013 in which he asserts the following, additional claims:

- A. [The trial judge violated my rights to due process and equal protection and my sixth amendment right to a fair and impartial trial].
- B. [Ineffective Assistance of Counsel].
  - 1. Trial counsel was ineffective for not impeaching conflict witness statement at trial.
  - 2. Trial counsel [was] ineffective for not [filing] notice of appeal as required by Rule 203 S.C.A.C.R.
  - 3. Trial counsel [was] ineffective for saying that her client was not innocent during open[ing] argument and closing argument without the consent of the defendant.
- C. Trial judge violate[d] defendant's right to be present at all stages of the proceeding[s] by having private [communication] with [deliberating] jury by notes that [mere] not done in open court. Rule 43(A) Fed. Rule Crim P. 43 (A). U.S. vs. Neff, 10 F. 3d 1821.
- D. Trial judge erred in [failing] to give a directed verdict of acquittal on murder charges].

E. [The] State failed to prove the deadly weapon element on the armed robbery charge because a beer does not constitute a deadly weapon. Failure to grant a directed verdict on this armed robbery charge offense violated Appellant's Fourteenth Amendment right to due process which required the prosecution to prove every element of the offense charged beyond a reasonable doubt.

F. The trial judge erred in denying counsel's motion to suppress Appellant['s] statement given to police since it was obtained in violation of *McNeil v. Wisconsin*, 501 U.S. 171 (1991). Also see *Minnick v. Mississippi*, 498 U.S. 146(,) 111 Sct 486[,] 112 L. Ed. 2d 489 (1991). *Edwards v. Arizona*, 451 U.S. at 484\_ 485[,] 101 Sct. At 1884-1885. Also see statement of Frank Furtick.

G. Trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery charges against him at the Pitt Stop store on Farrow Road. Nicolette Pittman testified that the man had a gun in [his] pants: with shirt tucked in his pants. She also say[s] that the gun was on his side and it had a black handle. See Nicolette Pittman's statement on page 152. A: 16, A. 17, Q. 21, A. 22, Q. 23, A. 24.

H. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery charges against him at the Pitt [Stop] Store on Farrow Road. LaShawn Hessel [testified] that she noticed he ha[d] a gun handle that's sticking out the right side of his pocket. She also [said] it's a black handle that was sticking out [of] his right pocket. See Trial Transcript and Lashawn Hessel testimony on p. 397. 1.A. Q. 7. 9.A.

I. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the assault and battery and armed robbery of Barbara Marlow. Stated that she was hit in her chest but did not go to the hospital [or] call EMS: [B]arbara Marlow [testified] that Lashawn [said] Ms. Barbara he got a gun. She never [testified] that she saw a gun, and see her testimony on p. 416, line 24.

J. The trial judge erred in denying counsel's motion to direct a verdict of acquittal on the armed robbery and assault and battery of a high and aggravated nature on Barbara Marlow and Lisa Harrell neither one of them went to the hospital. Lisa Harrell testified that he did have a bulge in his pants that looked like it could have been a gun at all times. See her testimony on p. 408. 19. A, 20 A, 21.A.

K. The kidnapping charge, I would argue that this cannot be submitted to the jury along with the armed robbery charge or the strong armed robbery charge, however Your Honor intends to Rule on that, as it would be a double jeopardy issued. Your Honor, it is the same conduct. She is the kidnapping statute, I understand it's very broad, but there also needs to be some sort of conduct to

qualify for kidnapping outside of the conduct that they are contending is the murder and/or the armed robbery.

L. On July 7, Petitioner filed a PCR application with the Richland County office of the Clerk of Court. A belated direct appeal hearing was not held on April 1, 2009. At the Richland County General Sessions Court. That was a motion hearing to have Tara Dawn Shurling removed as counsel because I filed a grievance against her with the office of Disciplinary counsel. Judge Manning granted the motion on April 1, 2009. I was not represented at that hearing. It was a motion hearing to relieve Tara Dawn Shurling as counsel. I did not get one fair bite of the apple. Every defendant has a right to file a direct appeal and one PCR application. Brian T. Petrano, Assistant Attorney General. Mislead the court when he say that the applicant has waived his right to raise any other PCR allegations at hearing. He also stated at the PCR hearing the Respondent consented to a belated direct appeal because their interview of trial counsel indicated that applicant did request an appeal and due to a clerical error a notice of appeal was not properly filed, and at the PCR hearing the applicant expressed his satisfaction and was not concerned with presenting any amendment to his application. The attorney general, Brian T. Petrano committing prejudice to bias the mind of the court.

On June 7, 2013, Respondent filed a motion for summary judgment and a return and memorandum. The federal district court granted Respondent's motion for summary judgment by Order dated March 19, 2014, finding the Applicant's claims were without merit.

Applicant timely served and filed a notice of appeal. The Fourth Circuit Court of Appeals denied Applicant's appeal on September 3, 2014, stating that there was no "substantial showing of a denial of a constitutional right."

**2014-000715**

Applicant subsequently filed a petition for a writ of certiorari with the Supreme Court of South Carolina which was dismissed on April 11, 2014 for incorrectly filing proof of service.

## **II.**

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. Trial Judge deprived petitioner due process
2. Trial counsel deprived petitioner due process
  - a. "Petitioner has a right to a fair trial he has a right to have assistance of counsel for his defence. He has a right to have counsel at all critical stages of the criminal proceeding. The due process clause of the 14 amendment guarantees effective assistance of counsel on his first appeal. As of right."
3. Petitioner conviction was unconstitutional
4. Belated conviction application
5. White v. State, 208 S.E.2d 35
6. Austin v. State, 409 S.E.2d 395

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### *Statute of Limitations*

The Court finds the Application must 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 to -160. Specifically, the Act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

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). 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) 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 Applicant was convicted on October 25, 2007, and he did not appeal. The current application was not filed until April 17, 2015— well after the one-year statutory filing period expired. Therefore, the Application is summarily dismissed as barred by the statute of limitations.

### *Successive*

The Court also finds the Application must be summarily dismissed because it is successive to Applicant's previous PCR application. 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 the applicant could have raised these allegations in a previous application, then the 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 current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and his Application is dismissed for being successive to his previous PCR application.

#### ***Res Judicata***

The Court finds the Application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also* Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Applicant had the benefit of the full appellate process during his prior PCR and its resulting appeal pursuant to White v. State. *Res judicata* also bars any issues that could have been raised in the former action. *Id.* This application presents allegations that could have been and were raised in those prior proceedings. The Applicant did raise the issues of White v. State before the South Carolina Supreme Court, who granted certiorari and affirmed his conviction. The finality of the previous Court rulings should be respected. Therefore, the Application is summarily dismissed as barred by the doctrine of *res judicata*.

*Applicant's Responses to Conditional Order of Dismissal*

This Court has reviewed Applicant's responses to the conditional order of dismissal and finds no grounds within that would prevent it from making the findings of that order final. Applicant makes many arguments regarding his counsel, the timeliness of his application, and alleged misrepresentations of the trial court. These could and should have been raised during his prior collateral attacks on his conviction, and this Court maintains its holdings from the conditional order of dismissal.

**CONCLUSION**

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

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

AND IT IS SO ORDERED this 7 day of July, 2017

Colu, South Carolina

  
L. CASEY MANNING  
Chief Judge for Administrative Purposes  
Fifth Judicial Circuit

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4002382

Frank #271663 Furtick

State of South Carolina

Alan Wilson

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 \_\_\_\_\_

2017 JUL 17 AM 11:26  
JESSICA ELIZABETH KINARD  
CLERK OF COURT  
RICHLAND COUNTY

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 PUBLIC 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 17 July 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Frank #271663 Furtick

Jessica Elizabeth Kinard

Frank #271663 Furtick

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*