

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Roger M. Young, Circuit Court Judge

 ORIGINAL

RECEIVED

JUL 20 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAKE LAKE,

APPELLANT

APPELLATE CASE NO 2016-000976

RETURN TO MOTION TO DISMISS

On February 27, 2017, Appellant, through undersigned counsel, filed his initial brief of appellant and designation of matter. The brief and designation were served on the state on the same date. On June 30, 2017, the state filed a motion to dismiss the appeal for lack of jurisdiction. Pursuant to Rule 240(e), SCACR, Appellant respectfully files this return and requests this Court not dismiss his appeal.

Procedural History

Appellant's case has a long and tortured history. Some of that history was omitted from the initial brief of appellant as it seemed irrelevant to the matter before this Court at the time. However, the state's motion to dismiss requires a closer examination of each twist and turn in this case.

Indictment & guilty plea

A Lexington County grand jury indicted Appellant for attempted murder (2011-GS-32-3107) on October 3, 2011. On October 4, 2012, Appellant appeared before the Honorable Roger M. Young, Sr., to enter a guilty plea to the charge of attempted murder. Suzanne Mayes represented the state, and Frank McMaster represented Appellant. Judge Young sentenced Appellant to twenty-eight years' imprisonment.

Post-sentencing motions

On October 9, 2012, Appellant filed a *pro se* motion for reconsideration. State's Attachment #1. On December 4, 2012, Appellant submitted a *pro se* motion to withdraw his guilty plea. State's Attachment #2. In the motion, Appellant stated he "was under the belief that a plea negotiation had been reached between the state and [his] attorney for a sentence of five (5) years." State's Attachment #2. On April 12, 2013, plea counsel sent a letter to the Clerk of Court noting his representation of Appellant at the guilty plea, his awareness of Appellant's filing of the motion to reconsider, and his request to be notified of the hearing on the motion so that he could assist Appellant. State's Attachment #3.

In 2013, while McMaster was representing Appellant, he was arrested and charged with driving under the influence, failure to give or giving improper signal, and hit and run involving property damage.¹ In the Matter of Frank Barnwell McMaster, 419 S.C. 37, 38-39, 795 S.E.2d 853, 854 (2017). McMaster pleaded guilty to DUI and improper turn, and the remaining charge was dismissed. Id. at 39, 795 S.E.2d at 854. McMaster paid a fine for his criminal offenses. Id.

¹According to the Richland County Clerk of Court, Frank McMaster was arrested on these charges on April 29, 2013, a mere seventeen days after McMaster's letter to the court in Appellant's case, and he entered his guilty plea on December 5, 2013.

In 2014, again while McMaster was representing Appellant, he was arrested for use of a firearm while under the influence of alcohol or drugs, disorderly conduct, and damaging/tampering with a vehicle.² Id. On March 4, 2014, shortly after his arrest for the second set of criminal charges, McMaster was placed on interim suspension. Id.; In the Matter of Frank Barnwell McMaster, Appellate Case No. 2014-000334 (S.C. Sup. Ct. filed Mar. 4, 2014). Ultimately, McMaster pleaded guilty to unlawful carrying of a pistol and paid a fine. McMaster, 419 S.C. at 39, 795 S.E.2d at 854.³

At some point subsequent to McMaster's suspension, Sarah Mauldin of the Lexington County Public Defender's Office, was appointed to represent Appellant.

Post-conviction relief proceedings

On March 5, 2015, Appellant filed an application for post-conviction relief (PCR). Exhibit #1. His filing included a copy of his motion for reconsideration of sentence, which showed it had been filed with the Clerk of Court on October 9, 2012. He informed the PCR court that his attorney "was supposed to arrange a hearing with the judge" on the post-trial motions. Appellant's PCR filing also included two letters from the Honorable Roger M. Young, Sr., which were written in response to requests from Appellant concerning his outstanding

² According to the Lexington County Clerk of Court, McMaster was arrested for these offenses on February 21, 2014, and entered a guilty plea on November 4, 2014.

³ On January 11, 2017, the Supreme Court suspended Frank McMaster from the practice of law for thirty (30) months. In the Matter of Frank Barnwell McMaster, 419 S.C. 37, 795 S.E.2d 853 (2017). According to the agreement for discipline by consent to which McMaster entered, "the common thread in both incidents was alcohol abuse induced by depression associated with the dissolution of his marriage." Id. at 39, 795 S.E.2d at 854.

motions. In the letters, Judge Young indicated the Lexington County Clerk of Court had no record of Appellant's motion for reconsideration. Exhibit #1.⁴

In July 2015, Appellant wrote to the Clerk of Court requesting the appointment of counsel in his PCR case. Exhibit #2. On September 4, 2015, Jeffrey P. Bloom wrote to the Clerk of Court requesting the appointment of counsel and noting that Appellant had filed post-sentencing motions. Exhibit #3. Mr. Bloom's letter stated that Appellant filed his post-sentencing motions *pro se*. Exhibit #3. Importantly, Mr. Bloom copied "Walt Whitmire, Asst. Attorney General" on this correspondence. Exhibit #3. On September 22, 2015, the Clerk of Court appointed David Allen to represent Appellant in his PCR action. Exhibit #4.

On March 7, 2016, the Honorable William P. Keesley entered a scheduling order, finding there was a pending motion to reconsider the underlying guilty plea and continuing the PCR proceeding beyond the April 2016 term. Exhibit #5.

Return to post-sentencing motions

On April 1, 2016, Appellant, through counsel, filed a brief in support of motion to reconsider sentence. State's Attachment #4. The state filed a response. State's Attachment #5. The state's response made no mention of hybrid representation. State's Attachment #5. The state never moved to dismiss the motion based on hybrid representation. State's Attachment #5. Instead, the state responded to the substance of the motion. State's Attachment #5. By an order filed on April 28, 2016, Judge Young denied Appellant's motion to reconsider. State's Attachment #6. In the same order, he denied Appellant's motion to withdraw his guilty plea as

⁴ In fact, the Clerk of Court lost the original motion for reconsideration. The motion included as Attachment #1 with the state's motion to dismiss shows the Clerk scanned the original motion, but lost it subsequently. A copy of the motion was placed in the file on August 11, 2015, and as of that date the motion had not been ruled upon. Additionally, the Clerk noted "Patrick Schmeckpeper/AG Office to follow up w/ Judge Young b/c outcome affects disp of PCR." State's Attachment #1.

untimely filed. State's Attachment #6. The order never indicated any concern regarding hybrid representation. State's Attachment #6.

On May 6, 2016, Appellant filed and served a notice of appeal concerning his guilty plea and post-sentencing motions. Pursuant to Rule 203(d)(1)(B)(iv), Appellant filed a written explanation to show there was an issue to be reviewed on appeal. In the explanation, Appellant asserted the guilty plea was not made knowingly and voluntarily because attempted murder requires a specific intent to kill and the record demonstrated Appellant did not understand the charge against him. Further, Appellant asserted it was structural error for the court to find the plea was freely, voluntarily and intelligently made prior to hearing the state's recitation of the facts. The state did not respond to the notice of appeal or move to dismiss at that time.

Return to post-conviction relief proceedings

On June 23, 2016, the state, represented by the Attorney General's Office, filed its return and motion to dismiss without prejudice. Exhibit #6. In the return, the state represented to the court that "Applicant, through counsel, moved to reconsider his sentence on October 9, 2012." Exhibit #6 at 1. Additionally, the state informed the court that "Applicant filed a Notice of Appeal with the South Carolina Court of Appeals on May 9, 2016" and that the matter was "presently pending before the South Carolina Court of Appeals." Exhibit #6 at 1. Thereafter, the state argued the matter was "currently on appeal before the South Carolina Court of Appeals," and that under the cited rule and statutory provision, "post-conviction relief [was] not available to the Applicant because the direct appeal [was] pending in the appellate courts." Exhibit #6 at 2.⁵ The state requested the application for PCR "be summarily dismissed without

⁵ The return cites "Rule 227, SCACR." Exhibit #6 at 2. However, this rule no longer exists. Previously, Rule 227, SCACR, related to the review of orders in post-conviction relief matters.

prejudice until such time as the direct appeal is resolved.” Exhibit #6 at 2. The state mentioned no concerns regarding hybrid representation.

By an order filed September 29, 2016, the Honorable William P. Keesley signed a consent order of dismissal without prejudice. Exhibit #7 at 1. In the order, Judge Keesley found that “Applicant, through counsel, moved to reconsider his sentence on October 9, 2012, and to withdraw his guilty plea on December 4, 2012.” Exhibit #7 at 1. The order also recounted Judge Young’s order denying the motions and Appellant’s filing of a notice of appeal. Exhibit #7 at 1. According to the court, “[t]he matter [was] presently pending before the South Carolina Court of Appeals.” Exhibit #7 at 1. The judge found “post-conviction relief [was] not available to the Applicant because the direct appeal [was] pending in the South Carolina Court of Appeals” “at the present time.” Exhibit #7 at 1. Ultimately, the judge dismissed the PCR application without prejudice “until such time as the direct appeal is resolved.” Exhibit #7 at 2. The order provided that Appellant must file his PCR application within one year of the resolution of his direct appeal. Exhibit #7 at 2. Importantly, the order was signed by the PCR judge, Appellant’s PCR counsel, Appellant, and the state, showing all agreed to the matters discussed in the order, including that plea counsel filed the motion for re-consideration. Exhibit #7 at 2. The order voiced no concerns from any of the parties, including the state, regarding hybrid representation.

Direct appeal

On February 27, 2017, undersigned counsel filed the initial brief of appellant and designation of matter on Appellant’s behalf. On June 30, 2017, Respondent filed a motion to dismiss and requested the timelines for filing his initial brief of respondent and designation of matter be held in abeyance pending the resolution of the motion. Appellant now files this response.

Discussion

Judicial Estoppel

The state contends that Appellant's notice of appeal is untimely because his motion for reconsideration did not stay the timeline for filing the notice of appeal as it was filed *pro se*. The state argues that Appellant was represented by counsel at the time of the filing of the motion. In support of this argument, the state points to "plea counsel's letter" dated April 12, 2013, filed on April 15, 2013. State's Attachment #1. However, a careful reading of the letter indicates plea counsel adopted the motion.⁶ The letter reads as follows:

I represented Jake Lake at his guilty plea, which occurred on October 4, 2012. Mr. Lake has filed a Pro Se motion to reconsider and I respectfully request that I receive a notice as to the date of the hearing in order that I may assist him if possible. Also, Mr. Lake's father Magistrate Judge Robert H. Lake would like to receive notice of the hearing.

State's Attachment #3. The state insists the letter shows plea counsel continued with his representation of Appellant. Additionally, the letter evidences plea counsel's intent to adopt Appellant's *pro se* motion as his own. This reading of the letter is exactly the one espoused by the state in related proceedings in the matter.

During the PCR proceedings, it was the state's position that the motion was filed "through counsel." Exhibit #6 at 1. The state was aware of the nature of the filing as the pleading was in the Clerk's file and publicly available. Additionally, the Clerk's handwritten

⁶ Another reading of the letter is that plea counsel abandoned Appellant. In the letter, plea counsel used the past tense, "represented," to indicate that his attorney-client relationship no longer existed. Further, he sought notice of the date of the hearing so that he *may* assist Appellant. This was not an affirmative indication that plea counsel would appear at the hearing or would assist Appellant. This language indicates plea counsel had abandoned Appellant. In fact, plea counsel puts himself into the same category as Appellant's father in his request for notice of the date of the hearing. If plea counsel had abandoned Appellant, then Appellant's filing of his *pro se* motion was **not** a product of "hybrid representation." The filing was entirely proper and adjudicated by the lower court.

note on the motion indicated the Attorney General's office was well aware of the motion and was following up on it. State's Attachment #1. After concluding that plea counsel adopted the motion filed by Appellant, the state represented to the PCR court that the pending post-sentencing motion was filed "through counsel" in its return. Exhibit #6 at 1. The state convinced the PCR court of this position as evidenced by the PCR court's order using this same language in reference to the motion. Exhibit #7 at 1. All parties signed the order evidencing their understanding and assent to the entirety of the order, including the language indicating the motion was filed "through counsel." Exhibit #7 at 2. The state is estopped from arguing a contrary position now.

In Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004), the South Carolina Supreme Court explained that "[j]udicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." "The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." Id. The Court went on to "delineate[] the requirements for the application of judicial estoppel." Id. at 215-216, 592 S.E.2d at 632. According to the Court, the following elements are necessary for the doctrine to apply:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. "The doctrine of judicial estoppel is an equitable concept and should be applied sparingly, with clear regard for the facts of the particular case." Id. at 216, 592 S.E.2d at 632. "The

application of judicial estoppel must be determined on a case-by-case basis, and must not be applied to impede the truth-seeking function of the court.” Id.

It is the same party in the direct appeal action and the post-conviction relief proceedings – the State of South Carolina. The Attorney General’s Office, a part of the Executive Branch of the State of South Carolina, represented the state in the PCR proceedings **and** in the direct appeal. Quite clearly, the first element is satisfied. See State v. Blakney, 410 S.C. 244, 256, 763 S.E.2d 622, 629 (Ct. App. 2014)(Few, C.J. dissenting)(holding the parties were the same at sentencing and on appeal where the state was represented at the sentencing by a solicitor and was represented on appeal by the general counsel for the Department of Probation, Parole and Pardon Services).

The second element is satisfied as well because the positions were taken in related proceedings – direct appeal and post-conviction relief – involving the same parties, the same conviction, and the same sentence.

The state was successful in maintaining its position that the motion for reconsideration was filed through counsel as that was the position ultimately adopted by the PCR court. The state benefitted from the position it took in the PCR proceedings as its motion to dismiss was granted.

The inconsistencies in the positions on behalf of the state must be part of an intentional effort to mislead the court. The attorney representing the state in the direct appeal action works for the Attorney General, just as the attorney representing the state in the PCR action worked for the Attorney General. The pleadings filed by the Attorney General in the PCR action were available to the attorney who filed the motion to dismiss either on the internal system used by the Attorney General’s Office or through the Clerk of Court’s Office. There is simply no

explanation for why the Attorney General would make one representation during the direct appeal and a different representation during the PCR action.

The two positions taken by the state are totally inconsistent. In the PCR action, the state represented to the court that the motion for reconsideration was filed **through counsel**. However, in the motion to dismiss, the state contends the motion for reconsideration was filed by Appellant and never adopted by plea counsel resulting in “hybrid representation.” These two positions are totally inconsistent. See Blakney, 410 S.C. 254, 763 S.E.2d 628 (Few, C.J. dissenting)(explaining that under judicial estoppel “the state may not argue to a sentencing court that the court has the power to suspend a sentence, and after the court accepts the state’s argument and suspends the sentence, turn around and argue, as it has done in this appeal, the sentence may not be suspended” as these two positions are “precisely the opposite” of each other).

“Judicial estoppel generally applies only to inconsistent statements of fact.” Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). South Carolina adopted the doctrine “as it relates to matters of *fact* (not law).” Id. (emphasis in original). “In order for the judicial process to function properly, litigants must approach it in a truthful manner.” Id. at 251-252, 489 S.E.2d at 477. Certainly, “parties may vigorously assert their version of the facts,” but “they may not misrepresent those facts in order to gain advantage in the process.” Id. at 252, 489 S.E.2d at 477. Thus, “[w]hen a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.” Id. “[T]he truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence.” Id.

Failing to apply judicial estoppel in this case would impede the truth-seeking function of the courts. Appellant entered his guilty plea, and post-trial motions were filed. Unable to have his motions heard and in light of plea counsel's suspension from the practice of law, Appellant sought relief through the avenue of PCR. During the PCR proceedings, Appellant provided truthful information regarding his guilty plea, his filing of post-sentencing motions, his expectation that plea counsel would assist him with the litigation of his post-sentencing motions, his writings to the plea judge in order to have the post-sentencing motions heard, and the plea judge's responses to his inquiries. During the PCR proceedings, the parties discovered that one of Appellant's motions was properly filed with the Clerk, but misplaced. This contributed to confusion on the part of the plea judge. Upon realizing the outstanding motion was not ruled upon, all parties, **including the state**, agreed the proper course of action would be to have the motion considered. Thereafter, all parties agreed the proper course of action would be to dismiss the PCR action and allow the direct appeal to proceed.

Appellant requests this Court apply judicial estoppel to a statement of fact – Appellant's post-sentencing motions were filed "through counsel" – consistent with this Court's authority and case law. By applying judicial estoppel, this Court will prohibit the state from making inconsistent representations of facts in the same or related proceedings to the detriment of a criminal defendant. Treating Appellant differently in the PCR proceedings and the direct appeal proceedings would place Appellant "in a classic Catch-22 situation which [he] could find no redress." See Tobias v. Rice, 386 S.C. 306, 311, 688 S.E.2d 552, 554 (2010)(overruling the Court of Appeals' opinion affirming the denial of Rice's post-trial motions to set aside the judgment and explaining that when Rice filed a *pro se* motion to reconsider the judgment, alleging her trial counsel abandoned her, the trial court declined to rule on it, treating her as

though she were represented by counsel, but on appeal, the Court of Appeals treated her as a *pro se* litigant with a duty to monitor her own proceedings where it was undisputed Rice's counsel was suspended from the practice of law during the course of the representation).

This was not a situation in which plea counsel acted as a mere conduit for *pro se* documents filed by Appellant. Cf. Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002)(finding hybrid representation where counsel filed a petition for writ of certiorari, then the petitioner filed a motion asking him to file a *pro se* amended petition, followed by counsel filing the amended petition with a letter stating he did not believe any of the issues in the amended petition were relevant but that he was submitting the petition at petitioner's request because counsel was acting as a "mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client"). Rather, plea counsel adopted the filing as his own when he wrote to the court explaining his representation of Appellant, his desire for notice of the hearing date on the motion, and his indication that he would assist Appellant with litigation of the motion. The state construed the filings in this manner when it represented to the PCR court that the post-trial motions had been filed "through counsel" and won its request to dismiss the PCR action based on this representation. Therefore, the state is estopped from maintaining a contrary position in the direct appeal.

Laches

The state's current contention that the post-sentencing motion was the product of hybrid representation was first presented on June 30, 2017, almost five years after the filing of the motion. Not once during that period of time did the state assert the motion was improperly filed or improper for consideration by a court despite multiple opportunities to do so. The state sat on its right to assert such a defense and is now barred from doing so by the doctrine of laches.

“Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Mid-State Trust, II v. Wright, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996); Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988); Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). “Laches is an equitable doctrine, which arises upon the failure to assert a known right.” Emery v. Smith, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004)(citing All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct. App. 2004). “Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights.” Muir, 336 S.C. at 296, 519 S.E.2d at 599. “[T]he party asserting laches must show it has been materially prejudiced by the other party’s delay.” Mid-State Trust, II, 323 S.C. at 307, 474 S.E.2d at 423. In sum, “[t]he party asserting laches must satisfactorily show negligence, the opportunity to have acted sooner, and material prejudice.” Muir, 336 S.C. at 297, 519 S.E.2d at 599.

According to the state, the nature of the motion for reconsideration of sentence as the product of hybrid representation was known either as soon as the motion was filed on October 9, 2012, or at least as early as April 12, 2013, when plea counsel sent a letter to the Clerk of Court regarding his involvement. The state was involved in this matter at all stages – the guilty plea, the post-sentencing motions, and the post-conviction relief proceedings. The state simply cannot claim it was unaware of the filing until June 30, 2017.

Further, the state never argued before any court that the motion for reconsideration was not proper for consideration as the product of hybrid representation despite multiple

opportunities to do so. As explained previously, the state's position was the opposite – the motion was filed through counsel and proper for reconsideration. Nevertheless, the state, fully aware of how and when the motion was filed, never asked the trial court to dismiss based on hybrid representation. The state could have asserted in its pleadings before the trial court that the post-sentencing motion was not proper for consideration due to hybrid representation, but the state made no such argument. In fact, the state's memorandum in support of denial of the motion stated that the "in response to the motion by Defendant, Jake Dale Lake, by and through counsel for Defendant, Sarah H. Mauldin, Esquire for reconsideration of sentence imposed by the Court on April 4, 2012[,] following his plea to the charge of attempted murder." State's Attachment #5. The state, fully aware of how and when the motion was filed, moved to dismiss without prejudice the post-conviction relief application to permit consideration of the merits of the post-sentencing motion. Certainly, the state could have asserted the post-sentencing motion was improper for consideration due to hybrid representation during the post-conviction relief proceedings, but it did not. Despite the multitude of opportunities over the course of almost five years for the state to claim that Appellant's motion was not proper for consideration by a court as it was the product of hybrid representation, the state failed to do so. The state waited until June 30, 2017, after the initial brief of appellant and designation of matter had been filed and after the parties had consented to the dismissal without prejudice of Appellant's PCR application, to make such an assertion. At a minimum, the state was negligent in its unreasonable delay in making its claim that Appellant's motion was the result of hybrid representation and not proper for consideration by a court.

Appellant suffered prejudice as a result of the state's negligent delay. During the PCR proceedings, Appellant agreed to the dismissal without prejudice of his PCR application so that

his direct appeal may proceed. Notably, the state agreed to this resolution as well. The language of the order induced Appellant to believe that his direct appeal would be permitted to go forward. While Appellant was not led to believe he would obtain relief on appeal, he was led to believe he would have the opportunity to seek relief on direct appeal. Had there been any contention at that time that Appellant's post-sentencing motions did not toll the time period for filing a notice of appeal, Appellant would not have agreed to the dismissal of his PCR application.

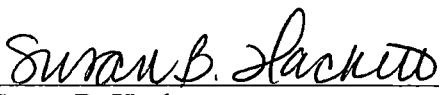
If this Court determines Appellant's post-sentencing motion was the product of hybrid representation and, therefore, the time the motion was pending did not stay the time for appeal, pursuant to Rule 29(a), SCRCrimP, then there is a high likelihood that Appellant's PCR application filed in 2015 or any other PCR application would be ruled untimely under the statute of limitations in the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. § 17-27-45(A)(providing for a one year limitations period after the entry of a judgment of conviction or one year after the sending of the remittitur to the lower court from an appeal). Thus, Appellant's conviction and sentence would never be reviewed by any court. This too is contrary to what Appellant was led to believe when he entered into the consent order to dismiss his PCR application without prejudice as the order specifically provided for him to file a PCR application at the conclusion of his direct appeal. The prejudice to Appellant based on the state's negligent inaction in this case is abundant, material, and clear.

This Court should deny the state's motion to dismiss under the doctrines of judicial estoppel and laches. The state must be judicially estopped from taking a position in the PCR proceedings inconsistent with the position it currently asserts during the appeal. The factual assertion by the state during the PCR pleadings was that the post-sentencing motion was filed "through counsel." The state cannot assert a contrary fact now – that the motion was filed pro se

while Appellant was represented by counsel and not adopted by counsel. Further, the doctrine of laches must bar the state's attempt to strip Appellant of his right to a direct appeal, and potentially, of his right to a PCR action in light of the state's almost five-year delay in asserting his claim despite numerous opportunities to do so.

Conclusion

Appellant respectfully requests this Court deny the state's motion to dismiss and allow the direct appeal to proceed.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of July, 2017.

Exhibit

#1

ORIGINAL

JM

STATE OF SOUTH CAROLINA

FILED

In the Court of Common Pleas

County of LEXINGTON

2015 MAR - 5 P 046

JAKE LAKE #352637
Full name and prison number (if any) of Applicant,

2015 CP3200860

VS.

APPLICATION FOR
POST-CONVICTION RELIEF

STATE OF S.C.
Name of Respondent.

INSTRUCTIONS --- READ CAREFULLY

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

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

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

1. Place of detention

B.R.C.I.

2. Name and location of Court which imposed sentence

LEXINGTON CO. COURT OF GENERAL SESSIONS, LEX., S.C.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2011-GS-32-03107

(b)

(c)

4. The date upon which sentence was imposed and the terms of the sentence:

OCTOBER 4, 2012; AND COURT DENIED POST-TRIAL MOTIONS ON JANUARY 12, 2015, AND FEBRUARY 3, 2015.

(a) SEE ABOVE ON P. 1.

(b)

(c)

5. Check whether a finding of guilty was made

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

FILED MOTION TO RECONSIDER ON OCTOBER 9, 2012 (WITHIN 5-DAYS OF SENTENCE), + MOTION TO WITHDRAW GUILTY PLEA ON DECEMBER 12, 2012, WHICH COURT HAD JURISDICTION TO HEAR BECAUSE THE MOTION TO RECONSIDER "STOPPED" THE CLOCK.

7. If you answered "yes" to (6), list

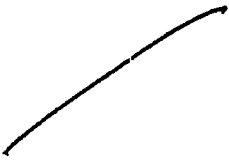
(a) the name of each Court to which you appealed: COURT OF GENERAL SESSIONS OF LEXINGTON CO., HON. ROGER YOUNG.

(b) the result in each such Court to which you appealed: MOTIONS DENIED.

(c) the date of each such result: JAN. 12, 2015, AND FEB. 3, 2015

(d) if known, citations of any written opinion or orders entered pursuant to such results: SEE ATTACHED LETTERS FROM JUDGE YOUNG,

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) 

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL, 6TH AMEND, U.S. CONST.

(b)

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) MY ATTORNEY TOLD ME THAT HE HAD A NEGOTIATED SENTENCE OF 5 (FIVE) YEARS, BUT I WAS SENTENCED

(b) TO 28 (TWENTY-EIGHT) YEARS.

(c)

11. Prior to this application have you filed with respect to this conviction

FILED
2015 MAR -3 P 04 49
LEXINGTON CO. CLERK OF COURT

- (a) any petition in a State Court under South Carolina Law? **YES**
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? **—**
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? **—**
- (d) any other petitions, motions or applications in this or any other Court? **YES**

12. If you answered "yes" to any part of (II), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. **MOTION FOR RECONSIDERATION OF SENTENCE, OCT. 9, 2012**
 - ii. **MOTION TO WITHDRAW GUILTY PLEA, DEC. 12, 2012**
 - iii.
 - iv.
- (b) the name and location of the Court in which each was filed:
 - i. **LEXINGTON CO. COURT OF GENERAL SESSIONS**
 - ii.
 - iii.
 - iv.
- (c) the disposition thereof:
 - i. **DENIED**
 - ii. **DENIED**
 - iii.
 - iv.
- (d) the date of each such disposition:
 - i. **FEB. 3, 2015**
 - ii. **JAN. 12, 2015**
 - iii.
 - iv.
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. **SEE ATTACHED LETTER FROM JUDGE YOUNG.**
 - ii. **SAME.**
 - iii.
 - iv.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

RECEIVED
 2015 FEB -3 P. 4:50
 FILED

14. If you answered "yes" to (13), identify:

- (a) which grounds have been presented:
 - i. **MOTION TO WITHDRAW GUILTY PLEA.**

- ii.
- iii.
- (b) the proceedings in which each ground was raised:
 - i. WRITTEN MOTIONS FILED WITH G.S. COURT
 - ii.
 - iii.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL, PER 6TH AMEND. OF U.S. CONSTITUTION. THIS IS MY FIRST PCR.
- (b)
- (c)

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

- (a) your arraignment and plea? YES
GUILTY PLEA
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? MY ATTORNEY WAS SUPPOSED TO ARRANGE A HEARING FOR ME, BUT NEVER DID.

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. FRANK McMASTER
 - ii. TOMPKINS + McMASTER, 1530 RICHLAND ST., PO BOX 7337,
 - iii. COLUMBIA SC 29202
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA + SENTENCE + POST-TRIAL MOTIONS
 - ii.
 - iii.

18. State clearly the relief you seek in riling this application.

VACATE PLEA + SENTENCE, AND GRANT NEW TRIAL.

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

NO.

2015 MAR -5 P 10:50
 FILED

2015 CP3200880

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON }

VERIFICATION

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

Jake Lake
(Signature)

SWORN to and subscribed before me this 4TH day of MARCH, 2015.

[Signature] (L.S.)
Notary Public
My Commission Expires: 6-21-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

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

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

Jake Lake
(Signature)

SWORN to and subscribed before me this 4TH day of MARCH, 2015.

[Signature] (L.S.)
Notary Public
My Commission Expires: 6-21-2015

FILED
2015 MAR -5 P 12:49

2015 CP3200880

STATE OF SOUTH CAROLINA }
County of LEXINGTON }

In the Court of Common Pleas

JAKE D. LAKE #352637
Full name and prison number (if any) of Applicant, }

vs. }

SUPPLEMENTAL
ATTACHMENT FOR
APPLICATION FOR
POST-CONVICTION RELIEF

STATE OF S.C.
Name of Respondent. }

The Applicant submits that he is within the one (1) year statute of limitations, per S.C.

Code Ann. §17-27-45, based upon the following:

I PLED GUILTY + WAS SENTENCED ON OCTOBER 4, 2012.
I FILED A POST-TRIAL MOTION ON OCTOBER 9, 2012, FOR
RECONSIDERATION OF SENTENCE, THUS, THIS MOTION
WAS TIMELY FILED AND "STOPPED" THE CLOCK ON THE
ONE-YEAR STATUTE OF LIMITATIONS. I THEN FILED A
MOTION TO WITHDRAW MY GUILTY PLEA ON DECEMBER
12, 2012. MY ATTORNEY FRANK McMASTER WAS SUPPOSED
TO ARRANGE A HEARING WITH THE JUDGE, ON JAN,
12, 2015 AND FEB 3, 2015, JUDGE COUCH DENIED MY MOTIONS.
THUS, I HAVE UNTIL FEB. 3, 2016, OR AT LEAST JAN. 12, 2016, TO
FILE A PCR.

(Signature)

Jake Lake

SWORN to and subscribed before me this 4TH
day of MARCH, 2015.

Notary Public

My Commission Expires: 6-21-2015

(L.S.)

FILED
2015 MAR -5 P. 10:49
LEXINGTON, S.C.

4

FILED

2012 OCT -9 A 9:56

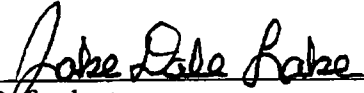
STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
 COUNTY OF LEXINGTON) BETH A. CARRIGG CLERK OF COURT
) LEXINGTON, SC) Indictment # 11-GS-32-03107

STATE OF SOUTH CAROLINA,)
)
 VS.) NOTICE OF MOTION AND MOTION
) FOR RECONSIDERATION OF
) SENTENCE
 JAKE DALE LAKE)
)
 DEFENDANT.)
 _____)

TO THE STATE, ABOVE-NAMED, Defendant would show that:

The Defendant Jake Dale Lake pleaded guilty in Lexington County in front of the Hon. Roger Young on October 4, 2012. He was sentenced to 28 years for attempted murder. Additional factors should be considered.

YOU WILL PLEASE TAKE NOTICE that the undersigned Defendant will move before the Presiding Judge of General Sessions Court in _____, South Carolina, on the _____ day of _____, 2012 at _____ o'clock in the ____m. or as soon thereafter as counsel may be heard for an Order granting a reconsideration of the sentence imposed on the Defendant.



 Defendant

10-9-12, 2012
 Lexington, SC

COPIES

FILED

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

FOR THE ELEVENTH JUDICIAL CIRCUIT

IND. # 2011-GS-32-03107

STATE OF SOUTH CAROLINA)

MOTION TO WITHDRAW

A GUILTY PLEA

VS.)

JAKE D. LAKE)

Defendant.)

The Defendant, Jake D. Lake (hereinafter, "defendant"), hereby moves before the Circuit Court of General Sessions for a hearing to withdraw his guilty plea.

On or about October 4, 2012, the defendant entered a guilty plea before the Hon. Roger Young, to the offense of Attempted Murder. The defendant was represented by attorney Frank McMaster. The defendant was sentenced to 28 years. The defendant immediately filed a Motion for Reconsideration in a timely manner, such that this action has been stayed pursuant to Rule 29 of the S.C. Rules of Criminal Procedure. The defendant now submits this supplemental motion.

The defendant was under the belief that a plea negotiation had been reached between the State and defendant's attorney for a sentence of five (5) years. The defendant did not place these matters on the record at the time of the plea and sentencing because defendant had a good faith belief that his attorney had already done so.

This Motion is made pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution; S.C. Constitution, Art. I §§ 3, 14, 15; *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988); and, R. 29, SCRCrim.P.

Respectfully submitted,

Jake D. Lake
Jake D. Lake

Defendant

Dated: 12-4, 2012



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

ROGER M. YOUNG
JUDGE

100 BROAD STREET, SUITE #368
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 958-2015
FAX: (843) 958-5108
E-MAIL: ryoungj@sccourts.org

January 12, 2015

Mr. Jake Dale Lake
Inmate #352637
B.R.C.I. Murray Unit #153
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Lake,

We received your letter regarding your request concerning a motion you filed in Lexington County, South Carolina. I contacted Lexington County Clerk of Courts Office and they informed me that you filed a motion in December 2012 to withdraw a guilty plea. Furthermore, you stated in that motion that you filed a motion to reconsider. Your motion to withdraw the plea was not based on any after discovered evidence and also was not filed timely. Therefore, the filing of your motion is barred by the statutory statute of limitations.

Additionally, the attorney of record, Mr. McMaster is currently suspended from practicing law at this time. This may be the reasoning behind Mr. McMaster failing to contact you or return any letters you may have sent his way.

At this time you may wish to contact the Assistant Solicitor assigned to your case, Suzanna Mayes, for any further information. Also, please know that Judge Roger M. Young, Sr., is out of the Ninth Circuit, which is located in Charleston County. Therefore, Judge Roger Young does not and will not address any matters that have been addressed in Lexington County.

I hope this helps you address any issues or concerns you may have. Please let me know if I can be of any further assistance.

Sincerely,

Stefan B. Feidler
Law Clerk to Judge Roger M. Young, Sr.



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

ROGER M. YOUNG
JUDGE

100 BROAD STREET, SUITE #368
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 958-2015
FAX: (843) 958-5108
E-MAIL: ryoungj@sccourts.org

February 3, 2015

Mr. Jake Dale Lake
Inmate #352637
B.R.C.I. Murray Unit #153
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Lake,

We received your follow up letter with questions concerning motion(s) you filed in Lexington County, South Carolina. First, both motions are barred. Your motion to withdraw a guilty plea was *not* timely filed and was *not* based on any after discovered evidence. The Lexington County Clerk's Office has no record of your motion to reconsider; thus, that motion is barred as well. Furthermore, you are barred from filing a post-conviction relief, since the application for relief must be filed within one year after the entry of a judgment for conviction. I hope this clears up any and all questions you may have.

Sincerely,

Stefan B. Feidler
Law Clerk to Judge Roger M. Young, Sr.

Exhibit

#2

CASE NO. 2015-CP-32-00880

To: Lexington County Clerk of Court

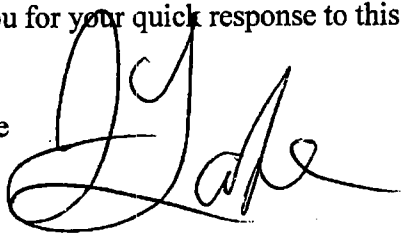
From: Jake D. Lake
SCDC ³⁷
Inmate # 3526~~27~~
Q3A 114
Perry Correctional Institution
430 Oak Lawn Rd.
Pelzer, SC 29669

To whom it may concern:

I need a lawyer appointed to me immediately to represent me in my PCR.
I am indigent and I do not have a lawyer currently representing me.
Once you appoint a lawyer to me, I will need their contact information such as phone number, mailing address, and email address.

Thank you for your quick response to this.

Jake Lake



OFFICE OF THE CLERK OF COURT
LEXINGTON, SC

JUL 30 2 34 PM

FILED

Jake Lake # 353631
SCDC Q-3-A-114
Perry Correction Inst.
430 Oak lawn Rd
Pelzer, SC 29669

RECEIVED

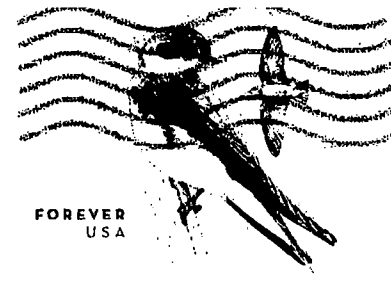
JUL 27 2015

PCI Mailroom

CP

GREENVILLE SC 296

28 JUL 2015 PM 4 1



Bank Swallow

Clerk of Court
205 East main St.
Lexington, SC 29072

29072959999



Exhibit

#3

SEP282015

**JEFFREY P. BLOOM
ATTORNEY AT LAW**

1911 PICKENS STREET
COLUMBIA, S.C., 29201-2631
OFFICE # (803) 256-7001
FAX # (803) 256-7002
CELL # (803) 261-4576

FILED
LICENSED MEMBER OF THE
S.C., N.C., & N.Y. BARS
E-MAIL: 2015 SEP 18 P 1:43
JPBLOOM803@AOL.COM

September 4, 2015

LETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Hon. William P. Keesley
P O Box 10
127 Courthouse Square
Edgefield, SC 29824-0010

Rec 9/8/15

RE: Lake v. State of South Carolina
PCR Case No. 2015-CP-32-0880 (Lexington County)

Dear Judge Keesley,

Please consider appointing PCR counsel to represent the above-named prisoner.

The State will likely submit a routine order of dismissal, arguing that petitioner filed outside the 1-year statute of limitations. I respectfully submit that petitioner has a valid legal claim that he is within the 1-year statute, but requires appointed counsel to make this argument to the court. I have assisted petitioner *pro bono* with some preliminary matters in this regard. For your reference, a summary is included below simply to provide a basis for allowing petitioner to have appointed counsel at this juncture.

On October 12, 2012, he pled guilty before the Hon. Roger Young, and was sentenced. He filed his PCR application on March 5, 2015. However, petitioner filed post-plea motions, *pro se*, on October 9, 2012, within 5-days of his plea, and a supplemental motion, again *pro se*, on December 12, 2012. Subsequently, petitioner's attorney was suspended from the practice of law, such that petitioner wrote Judge Young for the status of petitioner's post-plea motions. On January 12, 2015, and February 3, 2015, Judge Young wrote petitioner, denying the motions. The relevant documents are attached to his PCR petition.

Thus, petitioner has a legal claim that the post-trial motion of October 12, 2012, "stopped the clock," so that the PCR was filed within one-year of the trial judge's January 12, 2015, denial of the post-trial motions. Thank you for your consideration of this request.

Sincerely,

Jeffrey P. Bloom

cc: Walt Whitmire, Asst. Attorney General (PCR cases for the 11th Circuit)
P.O. Box 11549, Columbia, S.C. 29211

Jake Lake, SCDC # 352637; Perry C.I.

*emailed Clerk of Ct. to
App't. mtg. 9/17/15
WPC*

Exhibit

#4

JLM ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
 JAKE LAKE, #352637) DOCKET NO. 2015 -CP-32- 00880
 Applicant)
)
 STATE OF SOUTH CAROLINA) ORDERING APPOINTING COUNSEL
)
 Respondent)
)
) POST CONVICTION RELIEF APPLICATION

The Applicant has filed an application for post-conviction relief pursuant to Section 17-27-20, South Carolina Code of Laws, and it appears that the Applicant is indigent.

In accordance with the order and direction of the Court in such case, IT IS ORDERED that David Allen, Esquire, P.O. Box 3241 (Address) West Columbia, SC 29121 Telephone No. (803) 351-6363 is appointed to represent the Applicant in this proceeding.

The trial attorney was Frank mcmaster

The court reporter at the trial was _____

Attention is directed to a publication of the Post Conviction Relief Subcommittee of the Young Lawyers Division, Post Conviction Relief Proceedings in South Carolina, South Carolina Bar, 1990.


 Clerk of Court for LEXINGTON County

Lexington, South Carolina
 Sept. 22, 2015

White Copy - Original Yellow Copy - To Attorney Pink Copy - To SC Attorney General

Exhibit

#5

ORIGINAL

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

FILED

Jake Lake, 352637,

2016 MAR - 8 A 8:59

Applicant,

BETH A. O'NEILL
CLERK OF COURT

-vs-

LEXINGTON SCHEDULING ORDER

State of South Carolina,


Case Number 2015-CP-32-000880

Respondent.

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

- 1) There is a pending motion to reconsider filed in the underlying guilty plea.
The case is not ready for a final hearing.
- 2) The case is continued beyond the April 2016 term.

AND IT IS SO ORDERED.



William P. Keesley
Chief Judge for Administrative Purposes

Date: March 7, 2016

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3200880**

Jake Lake #352637	State of South Carolina
-------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

3/8/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

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

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

Exhibit

#6

Respondent contends that this matter is currently on appeal before the South Carolina Court of Appeals. Under Rule 227, SCACR, and S.C. Code Ann. 17-27-20(b) (1985), Respondent submits that at the present time, post-conviction relief is not available to the Applicant because the direct appeal is pending in the appellate courts. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, Respondent submits that this Application for post-conviction relief must be summarily dismissed without prejudice until such time as the direct appeal is resolved.

III.

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

WHEREFORE, Respondent moves to dismiss the application without prejudice because of Applicant's pending appeal, which is directly connected to his conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

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

By:


Attorneys for the Respondents

21 June, 2016.

FILED
JUN 23 A 10:56
BETH A. DARRIG
CLERK OF COURT
COLUMBIA, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
JAKE DALE LAKE, #352637)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent,)
_____)

IN THE COURT OF COMMON PLEAS

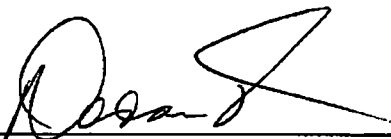
2015-CP-32-0880

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss Without Prejudice** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this the 21st day of June, 2016.



Deonna Rogers, Legal Assistant
For Respondent

FILED
2016 JUN 23 A 10:51
BETH A. CHARRICK
CLERK OF COURT
LEXINGTON, SC

Exhibit

#7

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED

Jake Dale Lake, #352637,

2016 SEP 29) P 3 51

~~2014-CP-32-3107~~

2015-CP-32-0880

Applicant, BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 5, 2015. The Respondent filed a Return, requesting the application be summarily dismissed because of the Applicant's pending direct appeal.

The Applicant was true bill indicted at the October 2011 term of the Lexington County Grand Jury for Attempted Murder. Frank McMaster, Esquire, represented the Applicant. On October 4, 2012, Applicant pleaded guilty as indicted before the Honorable Roger M. Young, Sr. Judge Young sentenced Applicant to twenty-eight years in prison.

W/acc #:

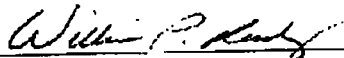
Applicant, through counsel, moved to reconsider his sentence on October 9, 2012, and to withdraw his guilty plea on December 4, 2012. On May 9, 2016, Judge Young's Order Denying Defendant's Motion to Reconsider Sentencing and Motion to Withdraw Guilty Plea was filed. The Applicant filed a Notice of Appeal with the South Carolina Court of Appeals on May 9, 2016. The matter is presently pending before the South Carolina Court of Appeals.

As the matter is presently pending on appeal, jurisdiction is in the South Carolina Court of Appeals. In accordance with Rule 243, SCACR, and S.C. Code Ann. § 17-27-20(b) (1985), this Court finds that at the present time, post-conviction relief is not available to the Applicant because the direct appeal is pending in the South Carolina Court of Appeals. See Al-Shabazz v.


State , 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Therefore, this Court finds this PCR application must be summarily dismissed without prejudice until such time as the direct appeal is resolved. The Applicant may file a PCR application within one (1) year after the resolution of his direct appeal. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003).

IT IS THEREFORE ORDERED that the application filed on March 5, 2015, be denied and dismissed without prejudice.

AND IT IS SO ORDERED this 29th day of Sept., 2016.


The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit

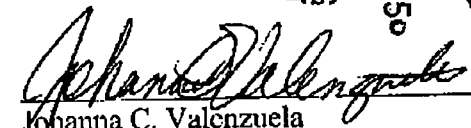
#2 WE CONSENT:



Jake Dale Lake
Applicant



~~INSERT YOUR SIGNATURE BLOCK~~
David K Allen
Attorney for Applicant



Johanna C. Valenzuela
Senior Assistant Deputy Attorney General
Attorney for Respondent

BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 SEP 29 P 3:50

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER

Jake Lake #352637		State of South Carolina	
-------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

10/18/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 29th day of September, 2016, and a copy mailed first class or placed in the appropriate attorney's box on the 19th day of October, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Beth A. Carrigg - Clerk of Court / kr

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

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAKE LAKE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Motion to Dismiss in the above referenced case has been served upon William F. Schumacher, IV, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jake Dale Lake, #352637, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 20th day of July, 2017.

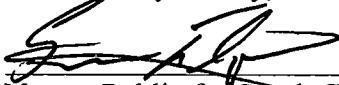


Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of July, 2017.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

RECEIVED
JUL 20 2017
SC Court of Appeals