

State of South Carolina  
In The Supreme Court

2013-CP-21-00613

Richard W. Stokes

Applicant

v.

Motion for Appointment  
of Counsel

State of South Carolina

Respondent

**RECEIVED**

JUL 28 2017

**S.C. SUPREME COURT**

Applicant, Richard W. Stokes request this Honourable Court to appoint counsel to represent him before this honorable court, because the issue raised has not been ruled on by any court in this state. See attached Final Order of Dismissal. This is a new issue and in order to be brought before the court properly an experienced attorney is needed to brief this issue.

Richard W. Stokes  
Broad River Court East  
4460 Broad River Rd  
Columbia, S.C. 29210

July 27 2017

cc: file

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In The Supreme Court  
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**S.C. SUPREME COURT**

Stokes

Applicant

v.

Certificate of Service

State of South Carolina  
Respondent

Applicant Richard W. Stokes declares under the penalty of Perjury that he mailed a copy of his Motion for Appointment of Counsel to the Parties listed below, by placing them in the U.S. Mail.

Clerk, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Richard Stokes  
Broad River Court Inst  
4460 Broad River Rd  
Columbia, S.C. 29210

Ms. Lindsey A. McCallister, A.A.G.  
P.O. Box 11549  
Columbia, S.C. 29211-1549

cc: file

July 27 2017



Applicant argues that the application is not barred by the doctrine of laches because he did in fact “exercise reasonable diligence in filing his application” within one year of the decision in Lafler.

Although no South Carolina court has passed on this exact issue, courts within the Fourth Circuit and elsewhere have repeatedly declined to apply Lafler and its companion case<sup>2</sup> retroactively, holding that they do not pronounce a new constitutional rule. See, e.g., In re Graham, 714 F.3d 1181, 1182 (10th Cir. 2013) (“To date, however, every circuit court to consider the question has held that Frye and Lafler do not establish a new rule of constitutional law.... We substantially agree with the reasoning of those decisions.”) (citations omitted); Ortiz v. United States, 2012 WL 5438938 (E.D.N.Y. Nov. 7, 2012) (collecting cases from Court of Appeals for the Fifth, Ninth, and Eleventh Circuits, as well as district court cases from the Fourth Circuit, which hold that Frye did not create a new constitutional right retroactive to cases on collateral review); Collins v. Cartledge, No. 2:14CV1200-BHH-WWD, 2014 WL 8396824, at \*3 (D.S.C. Nov. 14, 2014), report and recommendation adopted, No. CIV.A. 2:14-1200-BHH, 2015 WL 1518144 (D.S.C. Mar. 30, 2015) (“Neither Lafler nor Frye created a new rule of constitutional law that is retroactive to cases on collateral review.”). Applicant has cited no authority to the contrary, and this Court declines to find Lafler applies retroactively.

This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

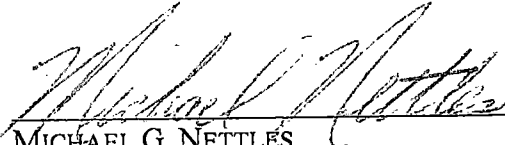
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<sup>2</sup> Missouri v. Frye, 566 U.S. 133 (2012).

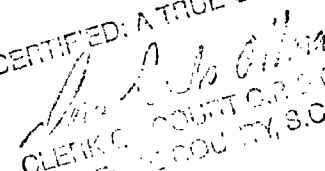
IT IS THEREFORE ORDERED that, for the reasons set forth above and in this Court's Conditional Order of Dismissal, the PCR application is hereby DENIED AND DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED this 28 day of June, 2017.

  
MICHAEL G. NETTLES  
Chief Administrative Judge  
Twelfth Judicial Circuit

Greenville, South Carolina.

FILED  
JUN 29 2017 10:55  
CLERK  
COURT

CERTIFIED: A TRUE COPY  
  
CLERK OF COURT C.R. S.S.  
FLORIDA COUNTY, S.C.

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Columbia, SC 29210

COLUMBIA, SC 290

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