

IN THE SUPREME COURT  
OF SOUTH CAROLINA

RECEIVED

Ervin M. Lopez, #269240 )  
petitioner )  
Vs. )  
State of South Carolina, )  
respondent )

Case No.: 2013-CP-400-4154  
MAR 29 2017

BRCI  
MAILROOM

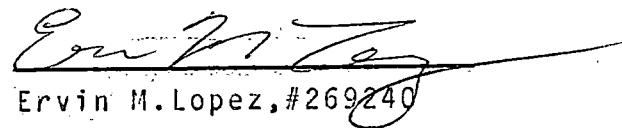
NOTICE OF APPEAL

NOW COMES, the Petitioner, Ervin M. Lopez, #269240, in the above titled matter, informing the South Carolina Supreme Court of his intention to Appeal the decision of the Lower Court rendered by the Honorable L. Casey Manning.

Judgment was rendered by the Honorable L. Casey Manning on February 28, 2017, and was received at Broad River Correctional Institutional Mailroom on March 17, 2017 ( see: Receipt of Legal Correspondence Verification Notice ) and the Inmate, Ervin M. Lopez, #269240 took delivery on March 21, 2017.

WHEREFORE, the Petitioner respectfully gives notice of his intent to Appeal the Lower Courts decision.

Dated: March 29, 2017

ISI   
Ervin M. Lopez, #269240

cc; File

S.C. Supreme Court  
Richland County Clerk of Court

RECEIVED

MAR 31 2017

S.C. SUPREME COURT

LEGAL MAIL

IN THE SUPREME COURT  
OF SOUTH CAROLINA

MAR 29 2017

Ervin M. Lopez, #269240, )  
petitioner )  
Vs. )  
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CERTIFICATE OF SERVICE

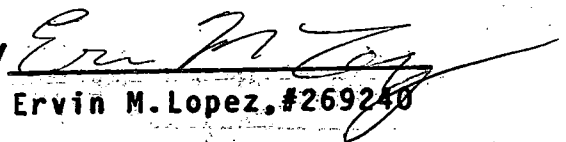
I Ervin M. Lopez, #269240, Petitioner in the above titled matter, do hereby declare and say, under the penalty of perjury of the laws of South Carolina. Have placed in the United States Mail at the Broad River Correctional Institutional Mail Room, a NOTICE OF APPEAL ( case# 2013-CP-400-4154 ) addressed to the South Carolina Supreme Court and the Richland County Clerk of Court at the addresses listed below, on this 29 day of March 2017.

The above has been served to the below addresses:

The South Carolina Supreme Court  
The Clerks Office  
Post Office Box 11330  
Columbia, SC. 29211

AND  
Richland County  
Clerk of Court  
Hon. Jeanette W. McBride  
Post Office Box 2766  
Columbia, SC. 29202-2766

RECEIVED  
MAR 31 2017  
S.C. SUPREME COURT

151   
Ervin M. Lopez, #269240

LEGAL MAIL

RECEIPT OF LEGAL CORRESPONDENCE VERIFICATION

This is to verify that legal correspondence addressed to the following:

Ervin Lopez (269240)  
4460 Broad River Rd MA 176  
Columbia SC 29210

**RECEIVED**

MAR 31 2017

S.C. SUPREME COURT

From:

Jeanette McBride  
Clerk of Court P.O. Box 2706  
Columbia SC 29202

was received in the Broad River Correctional Mailroom on 3/17/17 and delivered to inmate Lopez, Ervin on 3/21/17.



RRCI Postal Director  
4460 Broadriver Rd  
Columbia SC 29210

Date: 3/28/17

**RECEIVED**

MAR 28 2017

BRCI  
MAILROOM



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## Ervin M #269240 Lopez vs State of South Carolina

<b>Case Number:</b>	2013CP4004154	<b>Court Agency:</b>	Richland County Common Pleas	<b>Filed Date:</b>	07/18/2013
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Post Convict Rel 500	<b>File Type:</b>	PCR
<b>Status:</b>	Dismissed	<b>Assigned Judge:</b>			
<b>Disposition:</b>	Dismissed by Court - not Rule 40J	<b>Disposition Date:</b>	03/10/2017	<b>Disposition Judge:</b>	Benjamin, Deandrea G
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>		<b>Court Roster:</b>			

### Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Jameson, Megan Harrigan (Inactive)	PO Box 11549 Columbia SC 29211				Defendant Attorney		05/25/2016
<input checked="" type="checkbox"/> Kinard, Jessica Elizabeth	PO Box 11549 Columbia SC 29211				Defendant Attorney		02/14/2017
<input checked="" type="checkbox"/> Lopez, Ervin M #269240	Perry Correctional Institution 430 Oaklawn Road Pelzer SC 29669				Plaintiff Pro Se		07/29/2013
<input checked="" type="checkbox"/> Lopez, Ervin M #269240	Perry Correctional Institution 430 Oaklawn Road Pelzer SC 29669				Plaintiff		03/10/2017
<input checked="" type="checkbox"/> State of South Carolina					Defendant		07/18/2013

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

Ervin Lopez, #269240, )

Case No. 2013-CP-40-04154 )

Applicant, )

v. )

**FINAL ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

RICHLAND COUNTY  
FILED  
2017 MAR 10 AM 10:54  
JEANETTE H. HUNTER  
C.C.P. & C.V.

This matter comes before the Court pursuant to an application for post-conviction relief filed July 18, 2013 and amended on September 4, 2013. Respondent made its Return and Motion to Dismiss on September 25, 2013, requesting that the application be summarily dismissed as filed beyond the statute of limitations pursuant to S.C. Code Ann. § 17-27-45, successive to his previous application for post-conviction relief, and for failure to state a claim upon which post-conviction relief could be granted. After reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal, filed October 10, 2013, provisionally denying and dismissing this action based on the grounds set forth above. This Court gave Applicant twenty 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 is an Affidavit of Personal Service dated October 24, 2013, serving this Conditional Order of Dismissal on Applicant.

Applicant responded to the Conditional Order of Dismissal with several documents. The first document, captioned "Response and Objections to the Respondent's Return and Motion to Dismiss and There [sic] Conditional Order of Dismissal," signed by Applicant on October 14, 2013, is a twenty-five page document with numerous exhibits attached. In this document,

Applicant asserts that the primary focus of his new application is an allegation of ineffective assistance of counsel against post-conviction relief appellate counsel, Elizabeth Franklin-Best. In support of this argument, Applicant cites to Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 744-45 (2005), which he asserts requires appellate counsel handling post-conviction relief actions to “brief all available issues despite [sic] appellate counsel’s belief that the appeal is frivolous.” (emphasis is original). However, this is *not* the proposition that Bray sets forth. In Bray, the South Carolina Supreme Court held that “[PCR] counsel is required to advise an applicant of the right to appellate review of the denial of PCR.” Bray, supra. The Bray Court elaborates that PCR appellate counsel is required to brief arguable issues, despite counsel’s belief that the appeal is frivolous, to safeguard the right to appeal, but does *not* hold or state anywhere that appellate counsel is required to brief all preserved issues from the lower court PCR action. This Court rejects Applicant’s proposition that briefing all preserved issues is required during a PCR appeal and notes that such a requirement would impede the court system’s efficiency and would go against public policy.

Furthermore, there is no constitutional right to effective assistance of collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”); see also Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (declining to hold “that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions”). Apodictically, there is no constitutional right to effective assistance of counsel on appeal from a collateral attack. Cf. Finley, 481 U.S. at 555 (“We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction, *a fortiori*, he has no such right when

attacking a conviction that has long since become final upon exhaustion of the appellate process." (citations omitted)). This Court is especially unwilling to examine a claim of ineffective collateral appellate counsel where, as here, Applicant was afforded an appeal of his first collateral proceeding. See id. at 558 ("Since respondent has received exactly that which she is entitled to receive under state law-an independent review of the record by competent counsel-she cannot claim any deprivation without due process."). Accordingly, this Court finds Applicant has not demonstrated he is entitled to relief based on counsel's failure to brief certain issues in his appeal from his prior post-conviction relief hearing. See Aice, 305 S.C. at 450, 409 S.E.2d at 394 (the court should "not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not."). Therefore, Applicant has not shown a sufficient reason why the conditional order should not become final.

In this document, Applicant also asserts that issues of "State Action Interference" prevented him from having a preliminary hearing regarding his July 4, 2001 arrest and from raising an issue regarding a second warrant for Assault and Battery with Intent to Kill. However, Applicant appears to concede that this issue was previously raised in his initial action in some form, referencing arguments made by Respondent at his last hearing. This Court finds that Applicant has failed to provide sufficient reason why these issues could not have been raised timely in his first application and why the Conditional Order should not become final.

Applicant also responded with a second document<sup>1</sup>, captioned "Motion to Alter & Amend, Rules 59(e)," dated March 17, 2014 according to his accompanying cover letter. Respondent and this Court interpret this document as a response to the Conditional Order of

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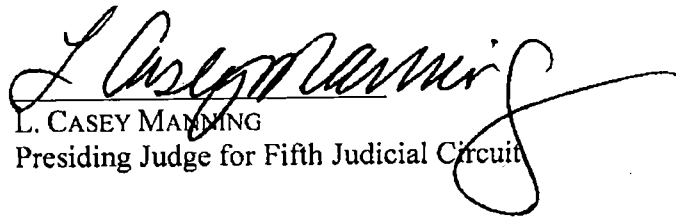
<sup>1</sup> Applicant has also submitted a "Notice and Motion to Seal the Record of this Case and Remove it to the 4<sup>th</sup> Circuit Court of Appeals," signed by Applicant on January 10, 2014. In this Motion, Applicant makes various speculative and unfounded comments regarding this Court and Respondent. As this is not pertaining to the substance of Respondent's Motion to Dismiss or this Court's Conditional Order of Dismissal, it will not be construed as a reply to the Conditional Order of Dismissal.

Dismissal, as a Motion to Alter or Amend would not be proper as there was no final disposition of the case. See 59(e), S.C.R.C.P. In this document, Applicant asserts similar arguments already made in his previous reply to the Conditional Order of Dismissal. As discussed above, this Court finds that these arguments do not provide a sufficient basis for why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal and in this Order, after reviewing all responses in total, this application for post-conviction relief is hereby denied and dismissed in full with prejudice.

This Court hereby notes that if Applicant wishes to appeal, he must file and serve a Notice of Appeal within thirty days of service on this Order to secure appellate review. See Rule 203, SCRAR. Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

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

  
L. CASEY MANNING  
Presiding Judge for Fifth Judicial Circuit

Columbia South Carolina

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

CASE NUMBER: 2013CP4004154

Ervin M #269240 Lopez

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

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

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

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

RICHLAND COUNTY  
FILED  
2013 MAR 10 AM 10:55  
JESSICA ELIZABETH KINARD  
CLERK OF COURT

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 10 day of mar 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Ervin M #269240 Lopez

Jessica Elizabeth Kinard

Ervin M #269240 Lopez

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court

*Jeanette W. Kinard*

W Mr Loper #269240  
I - Marion - 176  
60 Broad River Rd.  
Columbia, SC, 29210

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