

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

MAR 15 2018

S.C. SUPREME COURT

The Honorable Kristi L. Harrington

Case No: 2014-CP-18-00406

John B Robinson, Appellant,

State of South Carolina Respondent.

OBJECTION TO FINAL ORDER OF DISMISSAL.

Herein I will supply the factual evidence of why a final order of dismissal is improper.

The ruling of this court is improper because this court has a duty to the fundamentals of Justice in assuring Due process. My constitutional right to Due process is violated. The state freely admits that this issue of a BATSON violation was raised in the first PCR Application under ineffective assistance of counsel. Batson has been established and held by the Supreme Court as requiring reversal and/or relief.

SEE ST. VS. JUMAN 409 S.C. 19, 760 S.E.2D. 105


In Juman the trial court inappropriately left the burden of persuasion on defendant as the party opposing STATE'S BATSON motion. TRIAL COURT, NOT THE STATE challenged the sufficiency of defendant's explanation. As in this present case the Judge challenged the sufficiency of defendant's explanation on all strikes. Even going as far as to ask why trial counsel didn't like certain people (Pg. 62 W 14-17) (Pg. 62 W 24-25). After counsel gives Demunor as an explanation which is an established race neutral reason. Trial court even grilled counsel for 22 lines of transcript. Judge asks for another strike "you don't want any preacher's wives" (Pg 65 W 4-5). The Trial court is forcing the burden of persuasion on the defendant. This grilling of trial counsel on his strikes lasts for five pages (Pg. 60-65) of transcript, by the Trial court and NOT THE STATE. The burden of persuasion is forced on the defendant.

As The Party Opposing STATE'S BATSON MOTION.
After This There is A Second Jury Selection
in which one of the challenged strikes that was
struck the first time was seated on the Jury.
Juror #159. This Tainted the Jury giving rise to
Presumed Prejudice as there is no way to
determine with any degree of certainty whether
defendant's right to a fair trial by impartial
Jury was abridged. U.S. C.A. Const. Amend. 6.

Also Trial Counsel testified that I did not get a
Preliminary Hearing because he got the case after the
10 day limit. In EXH. 1 which is his first
communication as my counsel, IT clearly proves
that his testimony is false.

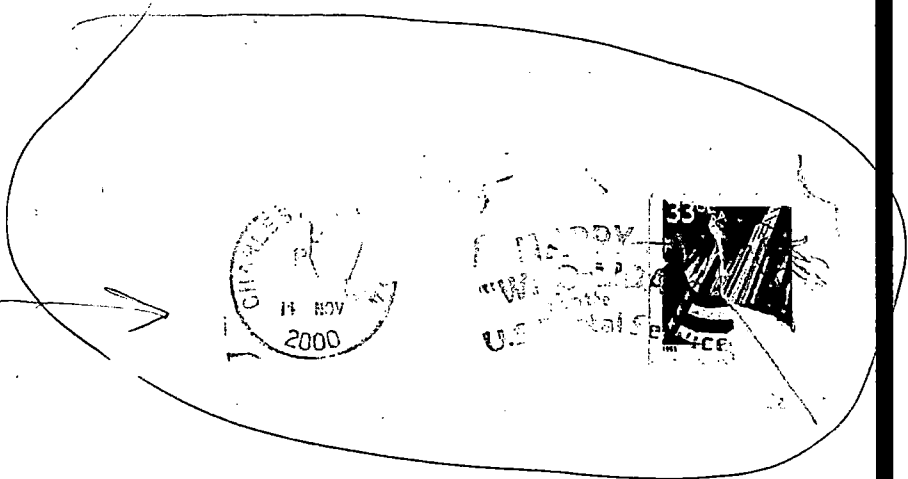
THE BATSON violation stands as a gross miscarriage
of justice and requires reversal and/or redress. Just
because I am poor and BLACK does not mean
I should be vulnerable to injustice. I am supposed
to have "one bite" of an apple. If you bite an apple juice will
flow. I want my juice and justice. I want my Constitutional
Right to Due process.

MARCH 12, 2018


John Robinson
PRO-SE

Gene W. Dukes
Attorney at Law
P. O. Box 622
100 Ridge Street
St. George, S. C. 29477

THIS POST MARKED LETTER
TO ME FROM COUNSEL PROVES
THAT HE HAD THE CASE
BEFORE 10 DAYS HAD
EXPIRED.



John Robinson
Dorchester County Detention Center
100 Sears Street
St. George SC 29477

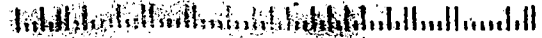


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11/14

29477-2458 01



EXH 1

4155

NOVEMBER 1 2001

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To whom it may concern: Judge Goodstein

I have been incarcerated for over one year. Despite my constant inquiries, I have received not one piece of information concerning the case against me. I understand that this may be an "on going" investigation, but to my astute knowledge "on going", is the "continuance of", and to this day there has been no information or evidence given to support the charges against me. I have just spoken with my attorney, Mr. Gene Dukas, on 11/12/01. He has conformed that the prosecution has no evidence to support their charges.

On 09/04/01, I requested that Mr. Dukas file two motions on my behalf, which he has thus far refused to do. Unfortunately, I am inclined to believe that Mr. Dukas will not honor my request. Therefore, I would like to move before the court, by notice and motion to have the charge of murder against me dismissed. If that motion is denied, then I would like to move before the court, by notice and motion, for an Order prohibiting the prosecution from introducing at trial any all evidence that has not been disclosed, as stated in section "F" of the Motion for Discovery and Inspection.

If this can not be accepted as legal filing of these motions, please instruct me on how to formalize and present said motions before the court properly.

Thank you,

John Robinson
JOHN ROBINSON

2014 JUN 17 AM 10:08
EM-RECORDED
CLERK OF COURT
DORCHESTER COUNTY
2014 JUN 17 AM 10:16
CERTIFIED COPY

CERTIFIED COPY

11-15-01

Cheryl Graham
Clerk of Court
Dorchester County

EXH # 2

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

John Bernard Robinson, #280311,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-18-0406

FINAL ORDER OF DISMISSAL

CERTIFIED COPY
2017 DEC 27 PM 4:01
Clerk of Court
DORCHESTER COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2014. Respondent made its return on or about May 20, 2014, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive PCR applications. A hearing into this matter was held on December 11, 2017 at the Dorchester County Courthouse. Applicant was represented by Rodney Davis, Esquire. The State was represented by Ruston W. Neely, Esquire, of the Attorney General's Office.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed June 19, 2014 and filed July 2, 2014, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service 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 July 18, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a *pro se* response captioned "Objection to Respondent's Conditional Order of Dismissal," dated June 10, 2014, in which Applicant asserts, the original "PCR judge

overstepped his authority by twisting the actual, factual record to fit his ruling, which is an erroneous application of the law.”

Applicant also filed a document titled, “Objection to Conditional Order of Dismissal,” dated July 28, 2014, in which Applicant argues that trial counsel was ineffective and the issues were never fully adjudicated at his first PCR because the PCR judge based his ruling on statements that weren’t made during the hearing.

At the hearing, Applicant was unable to establish any reason why his successive and statute of limitations barred application should not be dismissed. Accordingly, this Court finds that Applicant’s claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, “the holding in *Martinez*¹ is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRPC, Applicant’s contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

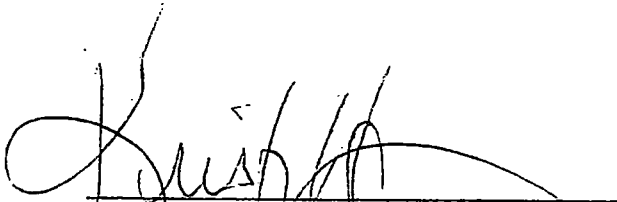
This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

¹ Martinez v. Ryan, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute “cause” to excuse procedural default in federal habeas corpus actions under the federal “cause and prejudice” standard)

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 19th day of December, 2017.



Kristi L. Harrington
Presiding Judge
First Judicial Circuit

Mandis Aune South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Kristi L. Harrington

Case #: 2014-CP-18-00406

2018 JAN 26 PM 5:02
FILED
DORCHESTER COUNTY

John B. Robinson,

Appellant.

v.

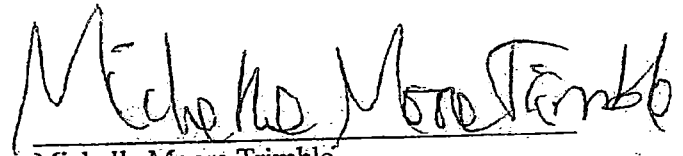
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Ruston W. Neely, Assistant Attorney General, Office of the Attorney General, State of South Carolina, P.O. Box 11549, Columbia, South Carolina 29211-1549, on January 24, 2018.

January 24, 2018



Michelle Moore Trimble
Paralegal to Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Kristi L. Harrington

Case #: 2014-CP-18-00406

John B. Robinson,

Appellant.

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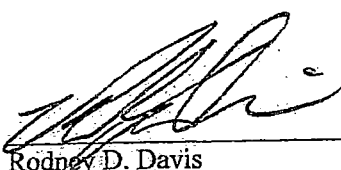
State of South Carolina,

Respondent.

NOTICE OF APPEAL

John B. Robinson appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Kristi L. Harrington on December 11, 2017. Counsel for the Appellant received the filed Order of Dismissal on or about January 3, 2018.

January 23, 2018



Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

2018 JAN 26 PM 5:02
CERTIFIED COPY
DORCHESTER COUNTY

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Phone: 877-224-4353 Fax: 877-866-9820
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RECEIVED

MAR 15 2018

S.C. SUPREME COURT

February 21, 2018

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: John B. Robinson v. State of South Carolina, Appellate Case No.: 2018-000199

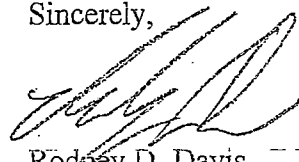
Dear Mr. Shearhouse:

I received a letter from your office dated February 12, 2018, requesting a response from me pursuant to Rule 243(c) of the South Carolina Appellate Court Rules. Mr. Robinson's Post Conviction Relief Application was dismissed based on this being a successive application and/or untimely under the statute of limitations. We argued against the dismissal at the hearing on December 17, 2017.

After reviewing the file, my notes, my research, communications with Mr. Robinson, the presentation of his case in court and the Order of Dismissal, I have determined that I do not have a good faith argument for appeal beyond what was presented at the Post Conviction Relief (PCR) evidentiary hearing. By sending a copy of this letter to Mr. Robinson, I am informing him that he has twenty (20) days from the date of this letter to file a pro se explanation as to why he believes that the dismissal of his PCR was improper.

I believe this satisfies my obligations to my client, Mr. Robinson, and to the Court. I appreciate your cooperation in this matter. If I am incorrect and you need anything further from me, please contact me. Otherwise, it is Mr. Robinson's obligation to contact your office and continue forward.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396


CC: John B. Robinson

Megan Jameson
Assistant Attorney General

Kimberly McCall
Appellate Division, SCCID

John Robinson 280311
51005 C.I. F.S.A. 159
610 17wy 9 west
Bismettsville sc 29512



UNITED STATES POSTAGE

PITNEY BOWES
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MAILED FROM ZIP CODE 29512

Daniel E. STEARHOUSE
CLERK, SUPREME COURT OF SC
PO BOX 11330
COLUMBIA SC 29211

