

**Lowcountry Law Office**

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
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E-Mail: [Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

**February 1, 2018**

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

RECEIVED

FEB 06 2018

S.C. SUPREME COURT

RE: Larry L. Phillips v State of SC; Case #: 2014-CP-18-0735  
John B. Robinson v State of SC; Case #: 2014-CP-18-0406

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case(s). Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal; and
- (5) A Request for Representation on Appeal.

The Applicant(s) – Appellant(s) were represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR case. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for the Applicant(s) – Appellant(s). Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

RECEIVED

FEB 06 2018

S.C. SUPREME COURT

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.

v.

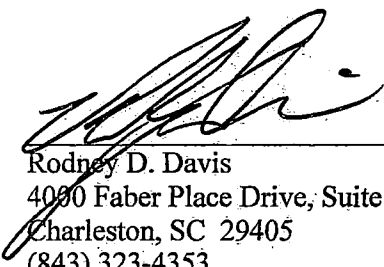
State of South Carolina,

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

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

CLERK OF COURT  
DORCHESTER COUNTY

2017 DEC 27 PM 4:01

CERTIFIED COPY

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*<sup>1</sup> 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.

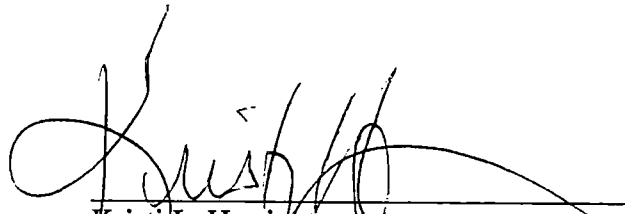
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<sup>1</sup> Martinez v. Ryan, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute “cause” to excuse procedural default in federal habeas corpus actions under the federal “cause and prejudice” standard)

**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 19<sup>th</sup> day of December, 2017.

  
\_\_\_\_\_  
Kristi L. Harrington  
Presiding Judge  
First Judicial Circuit

4 Months Away South Carolina.

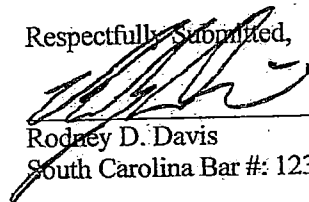
STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF DORCHESTER	)	CASE #: 2014-CP-18-00406
	)	
JOHN B. ROBINSON,	)	
	)	
Applicant.	)	
-versus-	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis  
South Carolina Bar #: 12396

Charleston, South Carolina  
January 24, 2018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )

CASE #: 2014-CP-18-00406

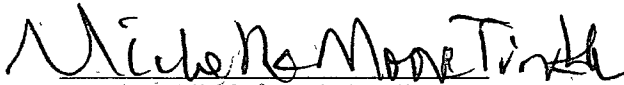
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **John B. Robinson**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

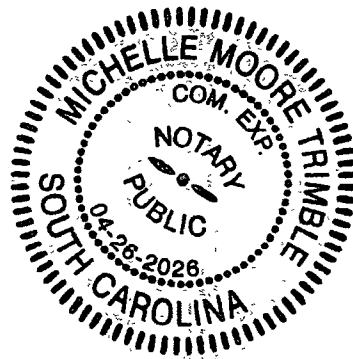


Rodney D. Davis  
South Carolina Bar #: 12396

SWORN to and subscribed to me this  
31 day of January, 2018.



Notary Public for South Carolina  
My Commission expires 11/26/2026



Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
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February 1, 2018

Kimberly McCall  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

RE: Larry L. Phillips v State of SC; Case #: 2014-CP-18-0735  
John B. Robinson v State of SC; Case #: 2014-CP-18-0406


Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) cases. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of the cases.

Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar # 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowCountryLawOffice.com](mailto:Davis@LowCountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

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.

v.

State of South Carolina,

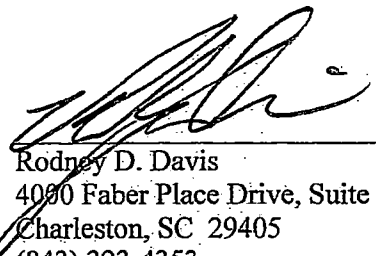
Respondent.

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2018 JAN 26 PM 5:02  
Kristi L. Harrington  
CLERK OF COURT  
DORCHESTER COUNTY

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

RECEIVED

FEB 06 2018

S.C. SUPREME COURT

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 25 PM 5:02  
VERIFIED COPY  
Mary Henderson  
CLERK OF COURT  
DORCHESTER COUNTY

John B. Robinson,

Appellant.

v.

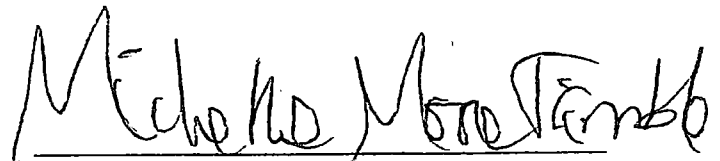
State of South Carolina,

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

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-18-00406

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed March 7, 2014.

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted at the March 2001 term of the Dorchester County Grand Jury for Murder (2001-GS-18-0325). Applicant was represented on the charges by Gene W. Dukes, Esquire. Applicant proceeded to trial before the Honorable Luke N. Brown on December 3-5, 2001. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to forty (40) years confinement.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Joseph L. Savitz, III of the South Carolina Office of Appellate Defense represented Applicant on his appeal, submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and petitioned the court to be relieved as counsel on October 30, 2002. Applicant did file a *pro se* response. The South Court of Appeals dismissed the appeal and granted counsel's request to be relieved. State v. Robinson, Op. No. 2003-UP-371 (S.C. Ct. App. filed May 22, 2003). The remittitur was issued on June 25, 2003.

**2004-CP-18-00861**

Applicant subsequently filed an application for post-conviction relief on May 21, 2004, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. Subject matter jurisdiction.
3. Plain error
4. Prosecutorial misconduct.

Respondent filed its return on or about December 1, 2004. An evidentiary hearing was convened on January 9, 2007, at the Dorchester County Courthouse. Applicant was present and represented by counsel Charles T. Brooks III, Esquire. The State was represented by Assistant Attorney General Ashley A. McMahan. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Gene W. Dukes. On March 16, 2007, the Honorable James C. Williams, Jr. issued an Order of Dismissal finding that the issues raised by Applicant lacked merit.

Applicant appealed the decision made by the PCR court and filed a timely notice of appeal. Applicant was represented by Katherine H. Hudgins, Appellate Defender from the South Carolina Commission on Indigent Defense. Counsel filed petition for writ of certiorari on Applicant's behalf on or about October 13, 2007, raising the following issue:

1. Did the PCR judge err in refusing to grant a continuance in order for PCR counsel to secure funding for and hire an investigator to explore issues of third party guilt when the trial attorney admitted that he did not independently investigate the purported alibi of a third party?

Respondent filed its return to the Petition for Writ of Certiorari on or about December 19, 2007. The South Carolina Supreme Court denied petitioner's writ of certiorari by order dated July 23, 2008. The remittitur was issued on August 11, 2008.

## 2009-cv-1977-RBH

Applicant then filed a petition for writ of habeas corpus on July 29, 2009, in federal district court. Petitioner raised the following issues verbatim:

1. Ineffective Assistance of Counsel.
2. Prosecutorial Misconduct.
3. Error.

On November 5, 2009, the Respondent filed a return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated September 15, 2010, finding that Petitioner's claims were without merit. Applicant appealed this order to the Fourth Circuit Court of Appeals who mandated the judgment on July 5, 2011.

### CURRENT APPLICATION

In his second and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Judge charge on malice murder is erroneous
  - a. Judge charge on malice murder is erroneous by established law of St vs. Belcher 385 S.C. 597. On trial page 579 Lines 2-20. The Judge States to the Jury: "But necessarily inferred from facts and circumstances proved. The law says if one intentionally kills Another with a deadly weapon, The implication of malice may arise." . . . (LN 17-20) In other words, a person may be guilty of murder where there was no actual or specific intent to kill, General malice is sufficient WITHOUT A SPECIFIC INTENT TO KILL." The indictment against me states that "He DID WITH AFORETHOUGH MALICE" If you remove the specific and actual intent to kill as the Judge charges The Jury Then you Remove the Requirements for malice murder as charged in the indictment. Removing these requirement for malice murder removes malice murder and there should Be a lesser offense. Belcher became available to me in March of 2013. Not only is the Judge's charge an error of law But It's prejudiccness destroys and undermines the constitution and fundamentally creates a gross miscarriage of justice. If you remove (as the judge charges) The elements that constitutes and establishes "malice murder" then you can not find a peron guilty of that charge

because the elements and requirements are not met. By this standard and established law I am being held in prison unlawfully.

2. Courts violation of Batson/Rogers proceeding
  - a. This issue is a matter of law and established constitutional standing. Through due diligence I have discovered new evidence cited at Rogers 2013 WL4734571. In this present case the trial court failed to follow proper procedure in the State's Batson challenge of defence's counsel's use of peremptory challenge to strike a white juror by not requiring the State to prove purposeful discrimination after counsel offered race neutral explanation as demeanor and disposition. Trial court did not follow the procedure of Batson to it's third step by not requiring the State to say one word or prove purposeful racial discrimination. After improperly granting the State's Batson motion a second jury was pulled. Upon this jury was now seated a disputed juror (juror # 150) that was struck from the first jury selection (trial page 63 line 23 and page 64 Lines 1-21). This erroneous Batson ruling has tainted jury and prejudices petitioner by abridging my rights to a fair trial by an impartial jury. Supreme Court rules and holds that disposition and demeanor are race neutral reasons for using peremptory strikes. U.S. Supreme Court and the Court of Appeals have jurisdiction to correct errors of law. Not following to the third step of Batson is an error of law. U.S. Constitution Art V, 5 and 9. S.C. Code Ann. 14-3-320 and 330, S.C. Code Ann. 14-8-200.
3. Judge's charge on "Malice Murder" although raised at PCR, it was raised as a ground for ineffective assistance of counsel and as plain error. St. Belcher was not established law or case at that time. In reviewing the present case on a case by case basis Belcher would qualify this present case as an erroneous "malice murder" charge by the trial judge. Through due diligence and because the "PCR" stage is a continuance of the direct appeal process this present case would fall under the conditional retro-activity. This issue stands also as a matter of law. Belcher became available in March of 2013.
4. Batson violation through due diligence I have discovered through Rogers 2013 WL4734571 a violation of law and the Batson process. Although Batson has been in existence Rogers has not. Roger is parrallell with this present case and it clearly states the guidelines and its violation. If you compare this present case with Batson, the violation is not clear but when compared with Rogers, Rogers becomes to cornerstone and clearly depicts the violation Rogers became available in September of 2013.

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State,

274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

### **Statute of Limitations**

This Court further finds that this Application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty on the offenses he challenges on December 5, 2001. The remittitur from Applicant's direct appeal was issued on June 25, 2003, so he was therefore required to file his application on or before **June 28, 2004**. This application was filed on March 7, 2014, which was nearly ten (10) years after the statutory filing period had expired.

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

### Res Judicata

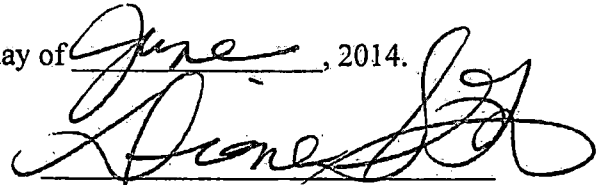
This Court further finds that the doctrine of *res judicata* bars the Applicant's claims of ineffective assistance of counsel. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits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

### III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division – 1<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 19 day of June, 2014.



DIANE S. GOODSTEIN  
Chief Judge for Administrative Purposes  
First Judicial Circuit

June 19, 2014  
South Carolina  
Orangeburg, S.C.

Case #  
2014-CP-18-00406