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RECEIVED

OCT 19 2018

S.C. SUPREME COURT

A. Bea Hightower

Arthur K. Aiken

October 18, 2018

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Robert A. Baker v. State of South Carolina
Civil Action No.: 2012-CP-32-1112

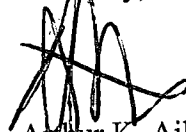
Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Robert A. Baker, in the above captioned post-conviction relief case. I have enclosed, for filing in your office, a Notice of Appeal and Motion to Proceed in Forma Pauperis for this case. Please return file stamped copies to me.

By copy of this letter with the filings enclosed, I have filed these filings with the Clerk of the Lexington County Court of Common Pleas and have served these filings on the Office of the Attorney General for South Carolina. Please call with any questions.

Thank you for your help

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

Enclosures as stated

cc: Clerk, Lexington County Court of Common Pleas (w/enclosures)
Office of the Attorney General for South Carolina (w/enclosures)
Robert A. Baker (w/enclosures)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2012-CP-32-1112

Robert A. Baker.....Applicant/Appellant

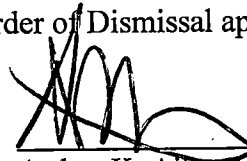
v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal signed on September 6, 2018 in this case. Appellant received written notice of the Order of Dismissal on September 21, 2018. Copies of the Order of Dismissal appealed from is attached.

October 18, 2018



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ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:

Office of the Attorney General of the State of South Carolina
Assistant Attorney General Sherrie Butterbaugh
PO Box 11549
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2012-CP-32-1112

Robert A. Baker..... Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE AND FILING

I certify that, on October 18, 2018, I served and filed the Notice of Appeal and Motion to Proceed in Forma Pauperis in the above appeal by mailing copies of those filings to the following:

Office of the Attorney General for South Carolina
Assistant Attorney General Sherrie Butterbaugh
PO Box 11549
Columbia, SC 29201

and

Office of the Lexington County Clerk of Court
205 E. Main St.
Lexington, SC 29072

SIGNATURE ON THE FOLLOWING PAGE

about whether the mental health evaluation was completed, Judge Keesley ordered a second post-conviction relief attorney be appointed. Art Aiken was appointed to represent the applicant on June 6, 2017.²

An evidentiary hearing was scheduled for December 13, 2017. Through counsel, the applicant received a continuance.

An evidentiary hearing was scheduled for February 20, 2018, at the Lexington County Courthouse. Applicant and his attorney, Mr. Aiken, were present. Assistant Attorney General Sherrie Butterbaugh was present on behalf of respondent.

At the start of the hearing, respondent moved to dismiss the case for failure to prosecute pursuant to Rule 41(b), SCRPC, arguing respondent had no indication from the applicant what allegations he wanted to pursue in order for respondent to prepare for the hearing, in light of the numerous amended applications filed and the number of years the case had been pending. Counsel for the applicant indicated applicant refused to speak to him about what allegations he wished to argue at the hearing, and the applicant would not participate in a scheduled telephone conference on February 14, 2018. Counsel for the applicant opposed respondent's motion to dismiss arguing summary judgment was not appropriate.

An applicant has the burden of prosecuting his action, and this Court may dismiss an action for a plaintiff's neglect in proceeding with his cause. *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006) (citing *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757 (1983)). Dismissal may be "imposed to maintain the orderly disposition of cases in the face of . . . multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect." *McComas*, 368 S.C. at 62, 626 S.E.2d at 904.

² Mr. Aiken indicated the evaluation was completed and applicant was found to be competent.

This Court finds the applicant has shown unreasonable neglect in prosecuting his post-conviction relief action. The Court finds the applicant was afforded numerous opportunities to be heard and pursue his case for relief over the course of the pending action, including the appointment of two experienced attorneys and the scheduling of both motions and evidentiary hearings. Through the applicant's failure to cooperate with appointed counsels, the applicant has continually frustrated the process of prosecuting his case. Accordingly, this Court finds applicant failed to prosecute his post-conviction relief action and the application must be summarily dismissed.

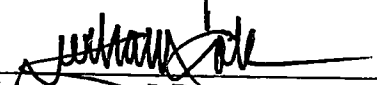
Conclusion

Therefore, the Court grants respondent's motion to dismiss this PCR application with prejudice. The Court notes the applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek review, PCR counsel must file a notice of appeal on the applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for further procedures for appeal.

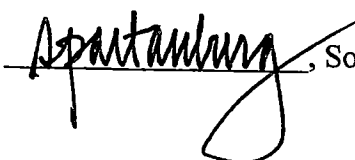
IT IS THEREFORE ORDERED:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 6 day of September, 2018.



THE HONORABLE J. DERHAM COLE
Presiding Judge


_____, South Carolina

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3201112**

Robert Allen Baker #341795		State of South Carolina	
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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: _____
- STAYED DUE TO BANKRUPTCY**
- 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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	9/17/2018 Date
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For Clerk of Court Office Use Only

This judgment was entered on **September 13th 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **September 17th 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Arthur Kerr Aiken 2231 Devine St. Ste. 201 Columbia, SC
29205

Kelly Oppenheimer Rembert C. Dennis Building PO Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.
