

James Anthony Primus 252315
MacDougall Correctional Institution
Birch Unit 2 C 13 B
1516 Old Gilliard Road
Ridgeville S.C. 29472

June 5 - 2019

The Supreme Court of South Carolina
Daniel E. Shearouse Clerk of Court
Post Office Box 11330
Columbia South Carolina 29211

RECEIVED

JUN 10 2019

S.C. SUPREME COURT

RE Case No. 2018-CP-18-0604
NOTICE OF APPEAL

Dear Honorable Clerk

Please find enclosed James Anthony Primus 252315 Applicant
Notice of Appeal to be filed in your office and
Please return and clock stamp copy back to me
at the above enclosed address.

I would like to thank you in advanced

Sincerely

James Anthony Primus

The Supreme Court of SOUTH CAROLINA

James Anthony Primus 252315
Applicant

Case No. 2018-CP-18-0604

v.

NOTICE OF APPEAL

STATE OF SOUTH CAROLINA
RESPONDENT

RECEIVED

JUN 10 2019

S.C. SUPREME COURT

NOTICE is hereby given that James Anthony Primus 252315
Applicant in the above named case Appeals From the order
of Judgment entered on 5-29-2019

This Appeal follows the Court Contested Violation of Applicant
Constitutional rights admitted Violation of Applicant Sentence
Sheet which constitute Fraud when someone outright lied
on a sentencing sheet " Applicant did not Plead Guilty "
That would void the sentencing sheet simple contract Law
ALSHA BAZZ v. State 527 SE2d 742 correct and
Sentence sheet a Justiciable Controversy -
Jowers v S.C. Dept of Health & environ Control 423 S.C.
345, 353 815 SE2d 446-451 2018 6-5-2019

James Anthony Primus 252315

James Anthony Primus pro se
MacDougal Correctional Institute
Birch unit 2 C 13 B
1516 Old Gilliard Road
Ridgeville S.C. 29472

The Supreme Court OF SOUTH CAROLINA

James Anthony Primus 252315
Applicant

Case no 2018-CP-18-0604

U.

NOTICE OF APPEAL

STATE OF SOUTH CAROLINA

Certificate of Service

The undersigned hereby certifies that a true copy
of Applicant Notice of Appeal was served upon
Respondents by mailing a copy of same properly addressed
UIA mail First class U.S. mail with sufficient postage
affixed thereto This 5 day of June 2019

Mrs Cheryl Graham
Dorchester County Clerk of Court
5200 E. Jim Bilton Blvd.
Saint George S.C. 29477

Benjamin Lim Baugh
S.C. Attorney General office
P.O. Box 11549
Columbia S.C. 29211-1549

The Honorable Diane Schatter Goodstein
Chief Administrative Judge 1st Circuit
P.O. Box 234
Saint George S.C. 29477

The Supreme Court of South Carolina
Daniel E. Shearouse clerk of court
Post office Box 11330
Columbia S.C. 29211

June 5 2019

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JUN 10 2019

S.C. SUPREME COURT

Respect Fully Submitted

James Anthony Primus 252315

James Anthony Primus Pro Se
MacDougall Correctional Institute
Birch Unit 2 C 13 B
1516 Old Gilliard Road
Ridgeville S.C. 29472

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 James Anthony Primus, #252315)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2018-CP-18-0604

FINAL ORDER OF DISMISSAL

CERTIFIED COPY
 2018 MAY 29 10 11 AM
 CLERK OF COURT
 DORCHESTER COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 2, 2018. Respondent made its return and motion to dismiss on October 24, 2018, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, and the presumption against successive applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed and filed November 19, 2018, provisionally denying and dismissing this action, while giving 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 by reference is an Affidavit of Service dated December 6, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On December 4, 2018, Applicant filed a document entitled "Objection Conditional Order Dismiss and Applicant Motion for Summary Judgment" In this response, he restated the same allegations he wrote on his post-conviction relief application as to why he was being held unlawfully. Furthermore, he argued that the respondent "does nothing more than restate the allegation of his response in conclusory terms and fails to set forth any valid reason whatsoever to

establish ~~any reason~~ why this said post-conviction relief must not be granted.” This Court has reviewed Applicant’s response to the Conditional Order of Dismissal in its 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.

Statute of Limitations

The Uniform Post-Conviction Procedure Act provides “[a]n 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 on appeal, whichever is later.” S.C. Code Ann. § 17-27-45(a). 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).

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) 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.” Applicant was sentenced for his convictions of kidnapping and ABHAN on September 1, 1998. Remittitur from the direct appeal was issued on June 5, 2002. The application was therefore due on June 5, 2003. Applicant has offered no explanation as to why he failed to comply with the statute of limitations, and therefore, this Court finds summary dismissal is appropriate.

Successiveness

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 Applicant's prior PCR application, as the issue he raises – that Counsel was deficient in his handling of the photo lineup at trial – is, by its very nature, an issue which was or could have been known to Applicant at the time he filed his first PCR action. Applicant has failed to establish sufficient reason why he could not have adequately raised his current allegations in his previous application for post-conviction relief. See Aice, 305 S.C. at 452, 409 S.E.2d at 395 (“[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.”).

In this case, Applicant filed his first application for post-conviction relief on July 11, 2002, which was denied on December 21, 2004. Applicant appealed the denial of his application and on April 4, 2007, the South Carolina Court of Appeals denied the petition. On August 2, 2007, Applicant filed a *pro se* Petition for Writ of Habeas Corpus in federal court. On February 27, 2008, the Honorable Thomas E Rogers issued a Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. Applicant filed his objection to the Report and Recommendation. An order adopting the Report and Recommendation of Judge Gossett and summarily dismissing the habeas action was entered by United States District Judge Patrick Michael Duffy on May 27, 2008. Applicant filed his second application for post-conviction relief on March 4, 2013, which was denied on November 20, 2013. Applicant appealed the denial of his application and on August 6, 2014, the South Carolina Court of Appeals denied the petition.

Applicant then filed a second Petition for Writ of Habeas Corpus on July 28, 2014. On September 16, 2014, the Honorable Thomas E. Rogers, III, issued the Report and Recommendation that Applicant's petition be dismissed with prejudice as successive and unauthorized. Applicant filed his objection to the Report and Recommendation on September 29, 2014. Applicant also filed a writ of mandamus. On November 25, 2014, the Honorable David C. Norton affirmed the dismissal of Applicant's petition and denied Applicant's motion for writ of mandamus. Applicant petitioned for a rehearing and was denied on March 30, 2015. On October 20, 2014, Applicant filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a successive application for relief under 28 U.S.C. §§ 2254 or 2255. This motion was denied by order filed November 3, 2014. In re: James Anthony Primus, No. 14-462 (4th Cir. 2014).

Therefore, every allegation in this application either was or could have been raised in Applicant's prior applications and Petition for Writ of Habeas Corpus, all of which have been denied and dismissed with prejudice.

As a final matter, this Court notes both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. See Butler v. State, 397 S.E.2d 87 (S.C.1990). **We can envision successive PCR applications filed for the purpose of delaying a just execution in a capital case, as well as other abuses of the reviewing system Aice urges that we establish.** For these reasons, we hold the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90. This Court has implied such a holding in the past. See Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980)

(applicant pointed to his attorney's "inadequate" performance; held not a "sufficient reason" warranting a successive application).

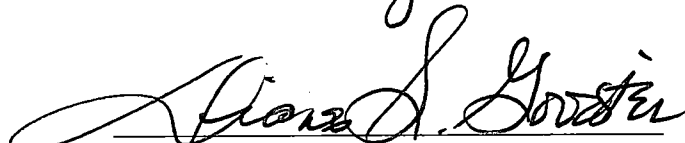
Aice, 305 S.C. at 451, 409 S.E.2d at 394. (emphasis added).

The United States Supreme Court has explained that "the principle of finality ... is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). This Court finds that Applicant's attempt to litigate his successive and time-barred applications is contrary to the recognized need for finality of litigation.

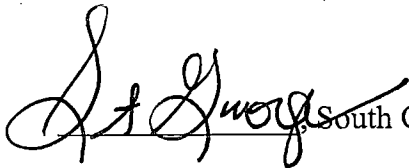
IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant he must file and serve a Notice of Appeal within thirty 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 23rd day of May, 2019.



DIANE SCHAFER GOODSTEIN
Chief Administrative Judge
First Judicial Circuit



South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP1800604

James Anthony Primus	South Carolina State Of	
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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), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - 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:

CERTIFIED COPY
 MAY 29 AM 11:01
 CLERK OF COURT
 DORCHESTER COUNTY

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.

Diane S. Goodstein
 Circuit Court Judge

2112
 Judge Code

5/29/2019
 Date

For Clerk of Court Office Use Only

This judgment was entered on **5/29/2019**, and a copy mailed first class or placed in the appropriate attorney's box on **5/29/2019**, to attorneys of record or to parties (when appearing pro se) as follows:

James Anthony Primus #252315, Birch 2; C13-B
1516 Old Gilliard Road Ridgeville, SC 29472

Benjamin Hunter Limbaugh 1000 Assembly Street
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

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-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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.

James Anthony Palmas 252315

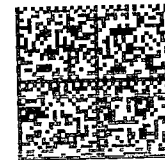
MACDOUGALL CORR. INST.
1518 OLD GILLIARD RD.
RIDGEVILLE, SC 29472

CHARLESTON

SC 294

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JUN 24 2019

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MacDougall Correctional Inst.
Mailroom

JUN 06 2019

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The Supreme Court of South Carolina
Daniel E. Shearouse clerk of Court
Post office Box 11330
Columbia South Carolina 29211

29211-133030

