ALAN WILSON
ATTORNEY GENERAL

October 4, 2019

The Honorable Alison Renee Lee
Chief Administrative Judge, Eleventh Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202-0192

Re: **Joseph Golson, #266765 v. State of South Carolina**
2018-CP-32-02234

Dear Judge Lee:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign and forward it to the Saluda County Clerk of Court in the enclosed envelope. If you have any questions or concerns please do not hesitate to contact me by phone at 803-734-3737 or by electronic mail at LillyMeadows@scag.gov.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LLM/ch
Enclosures

cc: Joseph Golson, #266765

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Joseph Golson, #266765, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-32-02234 **FINAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Joseph Golson (Applicant) on June 29, 2018. The State made its return and motion to dismiss on or about April 9, 2018, requesting the application be summarily dismissed based upon filing after the statute of limitations had expired; successiveness of the application; failing to present a *prima facie* case of newly discovered evidence; and because the pursuit of this current application frustrates the need for finality of litigation.

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 on February 8, 2019, 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 February 28, 2019 serving the above-mentioned Conditional Order of Dismissal on Applicant. Applicant filed a response on March 6, 2019. The 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.

In his response, Applicant addresses the finding that the application should be summarily dismissed due its successiveness by asserting that Applicant was deprived of his "full bite at the apple" in his original PCR application due to ineffective assistance of PCR counsel. However, the United States Supreme Court has held that there is no constitutional right to appointed counsel for collateral review of a conviction. *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722 (1991). 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).

The only recognized exception to the rule barring claims of ineffective assistance of PCR counsel is found in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). *Austin* recognizes a general exception to this rule where prior PCR counsel fails to appeal the denial of the application. However, *Austin* "is limited to its particular factual situation" and is only applicable in limited circumstances to correct procedural defects where an applicant is denied his "one full bite at the apple." *Id.*; *Aice*, 305 S.C. at 452, 409 S.E.2d at 394.

As mentioned in the Conditional Order of Dismissal, Applicant filed a timely notice of appeal in his original PCR application, which was perfected on Applicant's behalf by M. Celia Robinson, Esquire. The South Carolina Court of Appeals and South Carolina Supreme Court both denied his petition for writ of certiorari. Therefore, Applicant's allegation of ineffective assistance of PCR counsel does not fall within any exception to the rule barring such claims. The

Court finds Applicant's response wholly fails to set forth any reason why he could not have raised the remaining allegations in his previous action for post-conviction relief.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Thus, the Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed as untimely, successive, and because the pursuit of this current application frustrates the need for finality of litigation.

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 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 16th day of October, 2019.

ALISON R. LEE
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated BAGA RAHAMANI (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Dorchester)

AFFIDAVIT OF PERSONAL SERVICE

On this 28 day of February 2018 2019, I served the **Conditional Order of Dismissal**, on ***Inmate*** **Joseph Golson, *SCDC Inmate* #266765,** by delivering personally and leaving a copy of the same at **Lieber** ***Correctional Institution.*** Deponent is not a party to this action.

s/ BAGA RAHAMANI

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 28 day of February, 2018 2019

Patty Britt-Pooser (L.S.)
Notary Public for South Carolina
Patty Britt-Pooser

My Commission Expires: 5/9/2028

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Lieber ***Correctional Institution***), Ridgeville, Dorchester County, SC this 28 day of February, 2018 2019

s/ Joseph Golson
Inmate
SCDC *Inmate* #: 266765

2018-CP-32-02234

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Joseph Golson, #266765,

Applicant,

Vs.

Case No.: 2018-CP-32-02234

State of South Carolina,

Respondent./

APPLICANT'S OPPOSITION TO THE STATE'S MOTION FOR SUMMARY DISMISSAL & COURT'S CONDITIONAL ORDER OF DISMISSAL AS A SUCCESSIVE PCR.

This matter is being brought to the attention of this Honorable Court, by way of Joseph Golson ("hereinafter referred to as the Applicant"), acting pro-se. To move this court in opposition of what a first blush may have appeared to be (a successive application); whereas instead, "it is actually a continuance of the very initial application filed". Which was not fully exhausted as required by law.

(a). Procedural Background of The Case.

For purposes of this opposition. Applicant only refers to

relevant background relating to the issues at hand. In so doing, proceeding his trial and conviction for murder. Judge Clary, sentenced Applicant to serve a life sentence in the South Carolina Department of Corrections.

Applicant appealed his sentence and conviction within ten (10) days, after the June 1, 2000 sentence was imposed. Appellate Defender Robert M. Dudek, perfected Applicant's appeal, raising the following issue:

> Whether the trial judge misapplied State v. Terry by refusing to allow Applicant to cross-examine officer Johnny Bryant or otherwise place before the jury the fact Applicant told Bryant when he was arrested that "we were tussling over the gun and it went off", where the state presented testimony from two other police officeres that Applicant made statements, within hours of this earlier statement, admitting he intentionally shot the victim, but accidentally shot her in the chest since State v. Terry did not abrogate, the "rule of completeness", and fairness demanded context be given to these three statements?

The gist of what the appellate defender was attempting to convey was. The misapplication of Terry, which the trial court used to suppress Applicant's initial statement to police; "that I did it, we were tussling over the gun and it went off". In which the jury wasn't allowed to hear. To a subsequent statement that I did it, but didn't mean to shoot her in the chest. To which the jury was allowed to hear. "Had not Terry been misapplied, and had not the jury asked during deliberations to 're-hear' portions of the 911 tape". The appeals court may have been able to affirm

the conviction as it did, under the harmless error approach. However, this was the perfect case to have moved it to the Supreme Court, on appeal from the PCR ruling.

Following briefing and oral arguments, the Court of Appeals affirmed Applicant's conviction and sentence on March 25, 2002. State v. Golson, 349 S.C. 421, 562 S.E.2d 663 (Ct. App. 2002). Applicant filed a timely petition for rehearing, which was denied on May 15, 2002. Thereafter, from direct appeal, Applicant filed for a petition for writ of certiorari, to the South Carolina Supreme Court, which was denied October 28, 2002.

Applicant (to which is the bases of opposition here) filed his first PCR application on December 30, 2002. Which he alleged he was being held unlawfully based on;

1. Ineffective assistance of counsel, where counsel failed to pre pare any defense for trial;
2. Ineffective assistance of counsel, where counsel never investigated what happened on the night of the incident; never did a crime scene re-enactment.
3. Ineffective assistance of counsel, where counsel never did any ballistic research or test on the weapons, or whether they were commonly kept in his truck.
4. Ineffective assistance of counsel, where counsel failed to hire or call an expert witness to rebut the state's expert testimony which could challenge the accuracy and sufficiency of the State's theory.

Respondent filed its return and motion to dismiss on March 31, 2004, requesting an evidentiary hearing solely on the allegations of ineffective assistance of counsel and requesting the allegation the court lacked jurisdiction, be summarily dismissed. Thereafter on April 7, 2006, through his counsel, Applicant amended his PCR to include the following allegation:

> 1. Counsel was ineffective for failing to call expert witnesses at trial to rebut the State's expert testimony and for failing to challenge the accuracy and sufficiency of the evidence through a vigorous cross-examination of the State's witness, particularly regarding the trace evidence and forensic pathology issues surrounding the victim's shirt and a contact shot determination that was amended following the autopsy, and particulars about the victim's wound itself that would have supported the Applicant's version of the incident as an accident.

Respondent requested an evidentiary hearing into the allegation, which was convened on October 9, 2007 at the Lexington COunty Courthouse.

Applicant was present and represented by Carol A. McCurry, before the Honorable William P. Keesley. Thereafter, on October 18, 2007, the court denied and dismissed the application.

Applicant, through counsel filed a timely notice of appeal, and M. Celia RObinson, perfected the appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

1. Did the trial court err in finding that trial counsel's failure to obtain or present expert testimony in the areas of forensic

and trace evidence constitute ineffective assistance of counsel where counsel's failure prejudiced the defense sufficient to undermine confidence in the outcome of the trial?

2. Did the PCR judge err in finding that trial counsel's failure to present evidence helpful to the defense was not ineffective assistance of counsel?

3. Did the PCR judge err in finding that trial counsel's failure to present in evidence the 911 tape of Applicant's call for help after the shooting was not ineffective assistance, on the bases of his finding that the decision was a tactical decision which was adequately explained"?

4. Did the PCR judge err in finding that trial counsel's failure to have a working knowledge of Applicant's version of events and his inclusion in his opening statements of fact contrary to Applicant's version but confirming the State's theory before the jury did not constitute ineffective assistance of counsel?

5. Did the PCR judge err in finding that trial counsel was not ineffective in failing to prepare Applicant to testify regarding his taped statements and further ineffective in failing to present Applicant's statements in context during his direct examination?

6. The PCR judge erred in finding that counsel's failure to object to the assistant solicitor's misstatement of the evidence on closing did not constitute ineffective assistance and;

7. Did the PCR judge err in failing to find that trial counsel was ineffective in failing to argue to the jury that, if not accident, the evidence supported a finding of involuntary manslaughter?

The State responded on appeal by September 12, 2008. Thereafter on November 23, 2009, the S.C. Court of Appeals denied the petition for certiorari 'by written order'. Applicant, through counsel, sought a petition for rehearing on December 8, 2009, and was denied on January 20, 2010. Applicant through counsel attempted to petition the S.C. Supreme COurt, for a writ of certiorari

but his extension to file for the writ was denied on March 2, 2010, pursuant to Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009).

The above was the bases of Applicant's "Second and Third PCR being submitted". Because he was denied "his full and fair bite at the apple" on PCR as a result of his initial petition. In otherwords; "the State's highest Court has never had the opportunity to pass upon Applicant's very substantial claims of ineffective assistance of counsel". To which prejudiced the Applicant, and would have changed the outcome of the proceeding.

APPLICANT'S ARGUMENT IN SUPPORT

Here, the court of appeals denied Applicant's appeal from his PCR allegations by "written opinion" as opposed to an informal letter of denial. To which Ellison v. State, should not be applicable. Whereas, all subsequent PCR filings should have been given the benefit of the holdings in cases under Austin v. STate, 409 S.E.2d 395, 305 S.C. 453 (S.C. 1991)

In Austin, the right to seek appellate review of the denial of the PCR is expressly authorized by state law. S.C. Code Ann. §17-27-100. While we are aware the constitutional right to counsel does not extend to discretionary appeals on collateral review, we have ruled that Anders v. California, 386 U.S. 738 (1967), shall continue to apply in PCR matters. See Johnson v. State, 294 S.C. 310 364 S.E.2d 201 (1988).

In addition, an exception exist to combat the State's attempt to have this application procedurally barred, whenever the Applicant has been deprived of his right to appeal the PCR denial. See Aice, 409 S.E.2d at 395. The State could argue that the court of appeals reviewed the case and made its decision. However, such does not carry sufficient merit when a case such as this presents "special reasons", as when a Applicant can demonstrate actual innocence, but for the cumulative errors during pre-trial, trial and the initial PCR review.

In otherwords, even in light of the transcribed reocrd depict the jurors "requesting to hear the 911 call by the Applicant", during deliberations. The court of appeals deemed it harmless, "that the jury was excluded from hearing Applicant's account of the incident". That they were tussling over the gun and it went off. Had the jury learned that; "it certainly could have changed the outcome of the verdict". Thus, the court of appeals "AGEED" this was a trial error committed by the trial court, to exclude this statement from Applicant to Officer Bryant. But the then court of appeals clearly erred by insinuating such error could somehow be harmless. Even where the jury wanted to listen to the 911 tape.

What adds insult to injury, is where the PCR court, under the allegation of ineffective assistance of counsel. Finds "the failure of counsel to introduce the tape into evidence, was based on any tactical decision was more far-fetched than any other excuse".

Wherefore, the second PCR or subsequent PCR raising the deprivation of appeal should have been afforded the Aice remedy. And all subsequent filing merged into that. Because the initial PCR appeal to the S.C. Supreme Court was erroneously denied. A remedy should follow to permit Applicant's "full bite at the PCR apple". And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ Joseph Golson

Joseph Golson, #266765
Leiber Correctional Inst. SA-23
P.O. Box 205
Ridgeville, S.C. 29472

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cc: filed
s.c. att. gen
2/25/2019

CERTIFICATE OF SERVICE

I, Joseph Golson, do hereby certify that I have mailed a true and correct copy of my motion opposing the State's Conditional Order of Dismissal, to the South Carolina Attorney General's Office, at P.O. Box 11549, Columbia, S.C. 29211, with adequate postage attached thereto, on this 25 day of February 2019.

/s/ Joseph Golson
Joseph Golson

cc: filed
2/25/2019

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