

ROGER LEGETTE #243366
LIEBER C.I. / C.A. #47
POST OFFICE BOX 205
REDGEVILLE, S.C. 29472

RECEIVED
NOV 7 2011
S.C. SUPREME COURT

DANIEL E. SHEAROUSE, CLERK
S.C. SUPREME COURT
P.O. BOX 11330
Columbia, S.C. 29211

RE: LEGETTE V. STATE C/A No. 2010-CP-26-10314

CLERK SHEAROUSE,

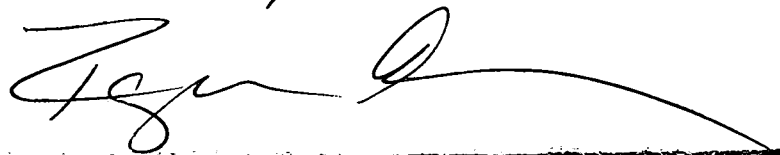
I received a letter from your office dated October 26th, 2011; requesting that I file a written explanation as to why my application was untimely filed.

I would respectfully direct your attention to the final order of the circuit judge at pg. 2, 2nd & 3rd para. which addresses the timeliness of the application. The court found the application to be timely filed.

I trust that this will suffice as explanation.

Dated: Nov. 4, 2011

Sincerely,



**COPIES
MAILED**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Roger Syndell Legette, # 243366,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-10314

FINAL ORDER OF DISMISSAL

FILED
JUN 29 AM 10:09
CLERK OF COURT

This matter came before the Court by way of an Application for post-conviction relief filed November 3, 2010, by Roger Syndell Legette. Respondent made a Return and Motion to Dismiss dated December 14, 2010, requesting that the Application be summarily dismissed. The Applicant then filed a "Motion to Address All Issues/Questions Presented" and a "Supplement to Application for Post-Conviction Relief" on March 2, 2011. On March 20, 2011, this Court issued a Conditional Order of Dismissal provisionally denying and dismissing the action, while giving the Applicant twenty days from the date of service of the Order in which to show why the conditional dismissal should not become final. The Applicant was served with a copy of the Conditional Order of Dismissal on March 31, 2011, at Lieber Correctional Institution.

On April 19, 2011, the Applicant submitted a response to the Conditional Order of Dismissal. In this response, he asserts that his PCR application was in fact timely filed and requests an evidentiary hearing on this issue. He also re-asserts his argument that the case of State v. Belcher is to be retroactively applied, and contends that the trial court was without jurisdiction and that the malice instruction given in his case was unconstitutional.


The Court will assume, for purposes of this Order, that the Applicant's allegations regarding the timeliness of his Application are true. This Court finds that, even if the PCR

Application was timely filed, the case must nevertheless be summarily dismissed because, this Court concludes, State v. Belcher is not to be applied retroactively to cases on PCR, as fully discussed in the Conditional Order of Dismissal at page 5. This Court also finds the Applicant's arguments regarding lack of jurisdiction and an unconstitutional jury instruction to be without merit. Therefore, the conditional dismissal must become final.

IT IS THEREFORE ORDERED that, for the reasons set forth above and in the Court's Conditional Order of Dismissal, the Application for PCR is hereby **DENIED** and **DISMISSED with prejudice**.

This Court hereby directs the Applicant's attention to Rules 203 and 243, South Carolina Appellate Court Rules, for the appropriate procedures to be followed in order to commence an appeal from this Order. A Notice of Appeal must be served **within thirty (30) days** of the service of this Order to secure appellate review.

AND, IT IS SO ORDERED this 16 day of Aug, 2011.


The Honorable Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Cowart, South Carolina