

The Supreme Court of South Carolina

Benjamin Holmes, Petitioner,

v.

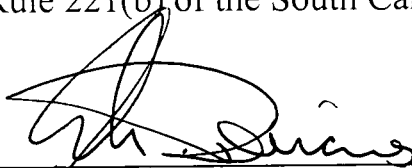
State of South Carolina, Respondent.

Appellate Case No. 2013-000454

ORDER

The circuit court issued a conditional order of dismissal, which gave petitioner twenty days to show cause why the conditional order should not become final. According to the final order of dismissal, petitioner did not file a response to the conditional order. Petitioner has now served and filed a notice of appeal from the final order.

Where, as here, a PCR applicant fails to file a response to a conditional order of dismissal, this Court has held that the applicant cannot appeal. *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006). Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.¹



FOR THE COURT

J.

Columbia, South Carolina

March 8, 2013

cc: Tyson A. Johnson, Sr., Esquire
Mr. Benjamin Holmes, #97258-071

¹ Petitioner alleges that he did file a timely response to the conditional order of dismissal. Even assuming that this is true, there is nothing to indicate that this issue has been raised to and ruled on the by the circuit court. This is simply not an issue that can be raised for the first time on appeal to this Court.