

CERTIFIED: A TRUE  
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 Clerk of Court C.P. & C.S.  
 FLORENCE COUNTY, S.C.

Johnell Richardson, SCDC #355032,

Petitioner,

v.

State of South Carolina,

Respondent.

Case No. 2020-CP-21-1467

**ORDER DISMISSING  
 PETITION FOR WRIT OF  
 HABEAS CORPUS**

2021 AUG -6 PM 2:03  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of Petition for Writ of Habeas Corpus filed by Johnell Richardson (Petitioner) on June 23, 2020. Respondent submitted a Return and Motion to Dismiss on June 9, 2021. This Order follows.

**I. PROCEDURAL HISTORY**

Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Petitioner was indicted at the March 2012 term of the Florence County Grand Jury for six (6) counts of kidnapping and seven (7) counts of armed robbery (2012-GS-21-0238). Petitioner was represented by Karen Parrott, Esquire.

On April 17, 2013, Petitioner pled guilty to five (5) counts of kidnapping and six (6) counts of armed robbery. The Honorable William H. Seals, Jr., sentenced Petitioner to concurrent terms of twenty-five (25) years imprisonment. Petitioner did not appeal his guilty pleas or sentences.

**A. Initial Post-Conviction Relief Action (2014-CP-21-0908) and Subsequent Appeal**

Petitioner filed his first application for post-conviction relief on April 10, 2014, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
  - a. Failure to hire a "mitigation investigator."
  - b. Failure to adequately prepare.

Respondent made its return on November 5, 2014. An evidentiary hearing into the matter was convened on November 7, 2016, at the Florence County Courthouse, before the Honorable D. Craig Brown. Petitioner was present at the hearing and was represented by Tristan Shaffer, Esquire. Lindsey A. McCallister, of the South Carolina Attorney General's Office, represented Respondent. Judge Brown denied and dismissed this application for post-conviction relief in an Order dated January 3, 2017.

Petitioner appealed the denial of post-conviction relief and was represented on appeal by Wanda H. Carter of the Office of Appellate Defense, who filed a petition for writ of certiorari and petition to be relieved as counsel pursuant to *Johnson v. State*, 294, S.C. 310, 364 S.E. 2d 201 (1988). The South Carolina Supreme Court denied Petitioner's petition by Order dated June 14, 2018. The remittitur was issued on July 2, 2018.

**B. Federal Habeas Corpus Action (8:18-cv-01935-DCC-JDA)**

Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on August 13, 2018. In his Petition, Petitioner set forth the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. "Counsel failed to secure witness that testimony would have established alibi for defence [sic.]. Counsel failed to disclose (2) two weeks prior to trial exculpatory evidence that would have helped defence [sic.]. Counsel failed to inform Petitioner that his rejection of the solicitor's plea offer may not be re-offered or resurrected at a later date."

Respondent filed a return and memorandum of law in support of motion for summary judgment on November 11, 2018. On March 26, 2019, the Honorable Jacquelyn D. Austin issued the report and recommendation that Respondent's motion for summary judgment be granted and Petitioner's petition be denied.

On May 13, 2019, the Honorable Donald C. Coggins, Jr., United States District Judge adopted the Magistrate's report and recommendation granting Respondent's motion for summary judgement and dismissed Petitioner's petition.

## II. CURRENT PETITION FOR HABEAS CORPUS ACTION

Petitioner filed the instant Petition for Writ of Habeas Corpus on June 23, 2020. In his Petition, Petitioner sets forth the following grounds for relief:<sup>1</sup>

1. Newly Discovered Evidence
  - a. "The applicant was tried, convicted and sentenced under unconstitutional acts and statutes that are not sealed in accordance to S.C. Const. Art. 3, § 18."
2. Lack of Subject Matter Jurisdiction
  - a. "By the act not having the Great Seal of this State embossed upon it's face indicates that there in not Legislative intentive approval in accordance to S.C. Const. Art.3, § 18."
3. "Petitioner did not knowingly and voluntarily enter a guilty plea."
4. "Trial counsel erred in failing to explain to petitioner that his rejection of the solicitor's fifteen-year plea offer and request for a jury trial would probably result in the expiration of the plea offer irrespective of the fact that he interrupted his jury trial and subsequently pled guilty in his case."

This Court has reviewed the Petitioner's records from the Florence County Clerk of Court regarding the subject conviction, Petitioner's records from the South Carolina Department of Corrections, Petitioner's prior PCR records, and the current Petition.

## III. DISCUSSION

"A habeas corpus petition must support the requested relief." *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. *Id.* at 40, 495 S.E.2d at 427-28.

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<sup>1</sup> Due to the length of Petitioner's arguments, they are not restated in full.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); *Gibson*, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” *Gibson*, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. *Id.* PCR is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” *Al-Shabazz v. State*, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” *Gibson*, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. *Id.*

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” *Keeler v. Mauney*, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” *Id.*

This Court agrees with the Respondent that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Therefore, these





ALAN WILSON  
ATTORNEY GENERAL

August 12, 2021

Philip Bryan Atkinson  
Atkinson Law Firm, LLC  
601 West Evans Street Suite 101  
Florence, SC 29501

**Re: Johnell Richardson, SCDC #355032 v. State of South Carolina**  
**2020-CP-2 1-1467**

Dear Mr. Atkinson:

Enclosed is a copy of the filed **Order Dismissing Petition for Writ of Habeas Corpus** the above-captioned case signed by The Honorable Michael G. Nettles and filed with the Florence County Clerk of Court.

Sincerely,

Michael D. Davidson  
Assistant Attorney General

MDD/em  
Enclosed for Service

**RECEIVED**

AUG 16 2021

BY: Kolby



**ATKINSON  
LAW FIRM, LLC**

**RECEIVED**

**Aug 23 2021**

S.C. SUPREME COURT

Philip B. Atkinson  
Attorney at Law  
Certified Family Mediator  
Guardian ad Litem

August 23, 2021  
VIA E-filing and US Mail

Honorable Patricia A. Howard  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: Johnell Richardson vs. State of South Carolina  
Docket No: 2020-CP-21-1467

Dear Ms. Howard,

Please find enclosed: one copy of a Notice of Intent to Appeal, along with my Motion to Proceed Without Cost, An Affidavit of Written Explanation Pursuant to South Carolina Appellate Court Rule 203(D) and a Certificate of Mailing which I will file with the office of the Clerk of Court for Florence County in accordance with Ex Parte Cauthen.

I am enclosing a copy of the Order Dismissing Petition for Writ of Habeas Corpus that was issued by Judge Michael G. Nettles. This matter is a Rule 203(d)(ii) matter wherein the petitioner appeals a final judgment denying his challenge on the constitutionality of a state law where the principal issue was to be the constitutionality of the law or ordinance.

By copy of this letter, I'm forwarding the same to Michael D. Davidson, Assistant Attorney General and counsel of record as well as Robert Dudek and Della White of the Office of Appellate Defense. There is no transcript to order as oral arguments were denied.

Thank you for your assistance in this matter and if you need anything further please do not hesitate to contact my office.

With kind regards I remain,

Philip B. Atkinson

Cc: Michael D. Davidson  
Johnell Richardson  
Robert Dudek and Della White  
Florence Co. Clerk Doris Poulos O'Hara