

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Docket No. 2020-CP-21-1467

Johnell Richardson, SCDC # 355032,

Petitioner,

v.

The State of South Carolina,

Respondent,

NOTICE OF APPEAL

Petitioner appeals from the Order Dismissing Petition For Writ of Habeas Corpus of the Honorable Michael G. Nettles, dated July 27th, 2021 and filed August 6th 2021, bearing the docket number 202-CP-21-1467. This Order was received by Petitioner's Attorney on August 16, 2021 via U.S. mail and is attached hereto and made a part of this notice.

August 20th, 2021



Philip B. Atkinson (SC Bar No.: 16686)
601 West Evans Street, Suite 101
Florence, SC 29501
(843) 612-0491
Email: philip@atkinsonattorney.com

Other Counsel of Record:

Michael D. Davidson, Assistant Attorney General

RECEIVED
AUG 26 2021
S.C. SUPREME COURT



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 26 2021

S.C. SUPREME COURT

RECEIVED

AUG 16 2021

BY: Kolby

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

FILED

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2020CP2101467

Johnell Richardson

2021 AUG -9 AM 9:33

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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:

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.

8/9/2021

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on August 6, 2021, and a copy mailed first class or placed in the appropriate attorney's box on August 9, 2021, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
 CLERK OF COURT OF THE
 FLORENCE COUNTY, S.C.

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

Michael D. Davidson Rembert C. Dennis Building 1000
Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Doris Poulos O'Hara - 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-Filers 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.

STATE OF SOUTH CAROLINA
 COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

CERTIFIED: A TRUE COPY
 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
 COURT REPORTERS O'HARA
 C.C.P. & C.S.
 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:¹

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.

¹ 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.*

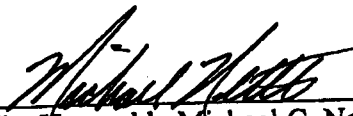
This Court agrees with the Respondent that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Therefore, these

claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina.
Accordingly, the Petition shall be summarily dismissed

IV. CONCLUSION

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby
denied and dismissed with prejudice.

AND IT IS SO ORDERED this 27 day of July, 2021.


The Honorable Michael G. Nettles
Chief Administrative Judge
Twelfth Judicial Circuit

Manion, South Carolina.

FILED
2021 AUG - 6 PM 2: 03
CLERK OF COURTS
SOUTH CAROLINA
COURT REPORTERS
FLORENCE COUNTY, SC