



ATKINSON LAW FIRM, LLC

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

December 7, 2021

RECEIVED

Dec 08 2021

SC Court of Appeals

Johnell Richardson #00355032
Broad River Correctional Institution SB/224
4460 Broad River Road
Columbia, SC 29210

RE: Johnell Richardson vs. State of South Carolina
Docket No: 2020CP2101467
Appellate Case Number: 2021-000905

Dear Mr. Richardson:

Please find enclosed a copy of the Court's December 7, 2021, letter to me halting their request for the filing of a Brief in the above-referenced Appeal as they consider my Affidavit of Explanation filed with the Notice of Appeal in accordance with Rule 203(d)(1)(B)(vi).

Please find enclosed another copy (I recently sent you an entire copy of your Appeal file on November 9, 2021) of the Notice of Appeal along with an Affidavit I filed with the Court simultaneously. **You have twenty (20) days from the date of the transmission of this letter to inform the Court in writing of any arguable basis that there are any issues preserved for appeal.** The Court's address is the South Carolina Court of Appeals, P. O. Box 11629, Columbia, SC 29211. According to the Court's instruction, I have provided you with this notice and copied the Clerk on this letter so they will be aware of the same.

This letter is being sent to you within ten days of the December 7, 2021, letter and placed into the US Mail and marked with appropriate postage. I have done so and provided the Court with proof so they will not immediately dismiss the Appeal.

Again, if you believe there are any issues preserved for Appeal, you must provide that directly to the Court. I had also asked, if you feel that is the case, that I be relieved as your attorney and that Appellate counsel be provided to you. You recall the Judge did not allow for a hearing on the record, determined that your filing was a secondary post-conviction relief action, and also indicated that the place for filing a request to challenge a state law was in the original jurisdiction of the Supreme Court and not the county.

Johnell Richardson #00355032
December 7, 2021
Page Two

Again, you only have twenty (20) days from the date of this letter to inform the Court in writing of any basis for disagreement with that assessment.

I hope are adjusting well to your new placement. I wish you the best. I firmly feel that filing the claim you initially attempted at the County level in the original jurisdiction of the Supreme Court is the proper way to receive relief if it is a valid argument concerning the existence of the law questioned.

Sincerely,


Philip B. Atkinson

PBA/lhs

Enclosures

cc: Chief Deputy Clerk V. Claire Allen
Michael D. Davidson



ATKINSON LAW FIRM, LLC

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

December 2, 2021
VIA US MAIL AND E-FILING

Chief Deputy Clerk V. Claire Allen
Court of Appeals of South Carolina
P.O. Box 11629
Columbia, SC 29211

RE: Johnell Richardson vs. State of South Carolina
Docket No: 2020-CP-21-1467
Your Appellate Case Number: 2021-000905

Dear Ms. Allen,

Pursuant to my conversation with the clerk assigned to my file (Mary Kaitlin Singleton), I am e-filing and mailing a request to you for an extension on the appellant's initial brief and designation of matter from your letter of November 5, 2021. My understanding is that would have been due on Monday, December 6. Because of the intricacies of this case, I would like to request a 60 day extension as I ask you to look at some of the other factors mentioned herein below.

Initially, this was filed as a habeas corpus by my client in the Florence County court. The judge summarily dismissed it and labeled it as an attempt at a second postconviction relief action without any hearing on the matter. It was indicated by the State, and agreed by the judge, that this was an action that should have taken place in the original jurisdiction of the Supreme Court.

In the interim, my client had been moved from Perry Correctional Center to Broad River Correctional Institution. I had no immediate means to communicate with him and had to preserve his right to appeal with no way of informing him that I might have agreed the case should be withdrawn and filed in the Supreme Court's jurisdiction. Subsequently, this triggered me to have to serve as his appellate counsel. I have had no experience in your court for the past 20 years save and except an appellate writing course in law school. I had already talked with Mr. Dudek at Appellate Defense regarding copying them on all my materials so that they could take over the appeal if necessary. For whatever reason, that has not yet transpired.

I also informed the court through my affidavit and written explanation that I did not see any meritorious issues that needed to be briefed. That might resolve the matter at hand as well. However, I also asked that I be relieved as counsel in that filing in paragraph 17. I asked the

court to appoint appellate defense to oversee if there were any further measures that need to be taken to protect the client's interest.

I write today to receive initial confirmation that I may have an extension of 60 days and also to humbly request that you review my Affidavit of Written Explanation Pursuant to South Carolina Appellate Court Rule 203 along with the exhibits attached and the notice of appeal that was filed on or about August 20, 2021. I would greatly desire further guidance from the court as how to proceed in being relieved as counsel and having counsel specializing in the appellate arena to assist my client further. I've been practicing family law in Florence County for over 20 years and only ended up as counsel of record in an effort to protect my client's interest as he was moved to a new facility. He recently wrote to ask that I forward all of his paperwork which he says was detained at Perry Correctional Institution. On November 9, 2021, I did so. By copy of this letter I am also informing him of this communication.

As required, I am copying attorney Michael D. Davidson for the state and attorney Robert Dudek for the South Carolina Appellate Defense. I appreciate your quick attention to the request for extension as the Monday deadline is looming and I did not believe there were any issues to be briefed based on my Cauthen affidavit. Thank you for your consideration.

Sincerely,



Philip B. Atkinson

Cc: Johnell Richardson
Michael D. Davidson, Esq.
Robert Dudek, Esq.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 07, 2021

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

Re: Johnell Richardson v. State
Appellate Case No. 2021-000905

Dear Counsel:

This Court has received your explanation for appealing. This appeal will be held in abeyance pending the Court's consideration of the affidavit of explanation filed with the notice of appeal in accordance with Rule 203(d)(1)(B)(vi) of the South Carolina Appellate Court Rules. Therefore, no further action will be taken on your motion for an extension of time.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court, or this appeal will be dismissed.



ATKINSON
LAW FIRM, LLC

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

November 9, 2021

Johnell Richardson #00355032
Broad River Correctional Institution SB/224
4460 Broad River Road
Columbia, SC 29210

RE: Johnell Richardson vs. State of South Carolina
Docket No: 2020CP2101467

Dear Johnell,

I received your most recent correspondence on November 5, 2021, where you indicated you have been at Broad River for the past two and a half months. This was information to me. To assist you in your question about any developments since we were last in contact, I have enclosed additional copies of all the letters I had sent to you during the time of your move.

Since there is no record on Appeal, the Brief for the appeal itself would be due in thirty days. However, you can see I was trying to get you transferred to someone who specializes in such Appeals from the letters that I had been sending over the last 75 days. I will keep you posted as to whether or not they grant me a continuance or if you received Special Appellant Counsel. I will write to Perry Correctional under a separate letter and copy you on the same requesting they speedily return your legal paperwork.

Sincerely,

Philip B. Atkinson

PBA/lhs
Enclosures



ATKINSON
LAW FIRM, LLC

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

November 9, 2021

Perry Correctional Institution DY2
430 Oaklawn Road
Pelzer SC 29669-8704

RE: Johnell Richardson vs. State of South Carolina
Docket No: 2020CP2101467

Dear Warden:

I received a letter from the above-referenced inmate on November 5, 2021, indicating he had been transferred to Broad River correctional over two and a half months ago. He has yet to receive the transfer of all of his legal paperwork, including important documents and information from me regarding a Habeas Corpus Petition he had filed which was denied in the Florence County Courts.

Please give this matter your immediate and urgent attention, locate this property and both call and write to ensure me that it is being securely delivered to Mr. Richardson at his new Broad River Correctional Institute location in SB224 at 4460 Broad River Road, Columbia, SC 29210.

By copy of this letter I am informing my client of our correspondence. I thank you in advance for your attention to my request.

Sincerely,

Philip B. Atkinson

PBA/lhs
cc: Johnell Richardson



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 05, 2021

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

Re: Johnell Richardson v. State
Appellate Case No. 2021-000905

Dear Counsel:

We are in receipt of your correspondence filed on October 20, 2021. Please be advised that due to there being no transcript, the time for serving and filing the appellant's initial brief and designation of matter will expire thirty (30) days from the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

cc: Michael D. Davidson, Esquire

The South Carolina Court of Appeals

Johnell Richardson, SCDC #355032, Appellant,

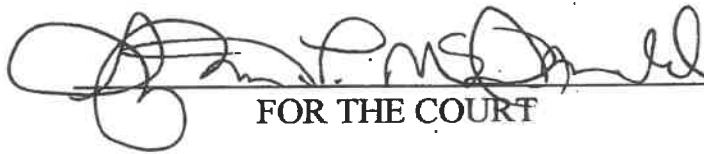
v.

The State of South Carolina, Respondent.

Appellate Case No. 2021-000905

ORDER

Appellant's motion to proceed *in forma pauperis* is granted. *See Lakes v. State*, 333 S.C. 382, 386, 510 S.E.2d 228, 230-31 (1998) (finding an inmate was entitled to proceed *in forma pauperis* on a habeas corpus petition in the absence of factual findings that the petitioner engaged in frivolous, repetitive, and abusive filings).



FOR THE COURT

Columbia, South Carolina

cc:
Philip Bryan Atkinson, Esquire
Michael D. Davidson, Esquire

FILED
Oct 14 2021

The Supreme Court of South Carolina

Johnell Richardson, Peitioner,

v.

The State of South Carolina Respondent.

Appellate Case No. 2021-000905

The Honorable Michael G. Nettles
Florence County
Trial Court Case No. 2020CP2101467

ORDER

Pursuant to Rule 204(a), SCACR, the appeal in the above entitled matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina

August 24, 2021

cc:

Philip Bryan Atkinson, Esquire
Michael D. Davidson, Esquire
The Honorable Jenny Kitchings

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
DOCKET No. 2020-CP-21-1467


JOHNELL RICHARDSON, SCDC#355032)
)
PETITIONER,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

**MOTION TO PROCEED
WITHOUT COST**

Defendant Johnell Richardson hereby respectfully moves this Honorable Court to be allowed to proceed without cost, pursuant to the standards established by the South Carolina Supreme Court. Ex Parte Cauthen, 291 S. C. 495 (1987).

1. Attorney for the Defendant Richardson is informed and believes that his client would wish to appeal the decision of the Court of Common Pleas denying and dismissing his petition for Writ of Habeas Corpus.
2. That attorney for Defendant Richardson believes that his client is in fact indigent.
3. That attorney for Defendant Richardson makes this motion pursuant to the standard established by the South Carolina Supreme Court via Ex Parte Cauthen, 291 S. C. 495, 354 S. E. 2d 381 (1987).

AUGUST 23RD, 2021
FLORENCE, SOUTH CAROLINA


PHILIP B. ATKINSON
ATTORNEY FOR THE PETITIONER
601 WEST EVANS ST, SUITE 101
FLORENCE, SC 29501
(843) 612-0491 FAX: (843) 665-0500
PHILIP@ATKINSONATTORNEY.COM

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,

Affidavit of Written Explanation Pursuant
to South Carolina Appellate Court Rule 203 (d)(B)(iv)

Personally appeared before me, Attorney Philip B Atkinson, who being duly sworn, deposes and states as follows:

- 1) I was appointed to represent Johnell Richardson by Order of Circuit Court Judge Michael G. Nettles dated January 22, 2021 (an Amended Order with corrected addresses substituting me for Attorney Michael C Abbott).
- 2) I graduated from the University of South Carolina School of Law in 1999 and I am admitted to the South Carolina Bar.
- 3) I am a member of the Florence and Marion County bar associations.
- 4) My practice primarily involves litigation and family disputes and nearly 80% of my current caseload involves matters in the Family Court. I'm also a certified mediator, serve as a guardian *ad litem*, and perform contract services for the guardian *ad litem* program in Dillon, South Carolina as well as serving as a private guardian myself.

PA

- 5) During that time that I've been practicing law, I have practiced primarily in the state courts. My primary practice concentrates on matters in the Family Court for the State of South Carolina and, from time to time, on any cases where the clerk selects me as counsel for indigent clients.
- 6) The purpose of the appointment above was to serve as Mr. Richardson's counsel regarding his filing for habeas corpus relief.
- 7) My client filed his petition himself prior to the appointment of his first attorney, Mr. Abbott, and already had one hearing continued before I was even appointed as his successor counsel as listed above.
- 8) By June 9, 2021 the office of the Attorney General had finally been properly served with the pleadings initially (and errantly) filed by the client due to my efforts which prompted their Return and Motion to Dismiss the Petition for Writ of Habeas Corpus along with a proposed Order to the Judge for gaining such relief.
- 9) By June 22, 2021 I began corresponding with the judge and opposing counsel asking for oral arguments in the above-referenced case to indicate what reason, if any, my client could show that the relief requested therein was not a subsequent post-conviction relief action and why those materials could not have been presented under a previous application the client filed on April 10, 2014.
- 10) The judge in this matter did not respond to my request for a hearing or oral arguments and granted the respondent's order dismissing the petition for writ of habeas corpus. Initially, there were some scrivener errors the State made. A corrected copy was sent to the judge before the matter was finalized. The final copy of the Order Dismissing the Petition for Writ of Habeas Corpus was served upon me via mail on August 16, 2021.
- 11) Out of an abundance of caution, knowing from previous conversations with my client that he would intend to appeal any such dismissal, I undertook this filing of a Notice of Intent to Appeal and signed the actual document August 20, 2021.
- 12) Out of an abundance of caution, I also filed a motion to proceed without cost in accordance to Ex Parte Cauthen, 354 S.E. 2d 381, 291 S.C. 465 (1987) completing that on August 23, 2021.
- 13) There was no transcript from any proceedings to be ordered from the court to be provided to the appeals court.
- 14) It is conceded that the petitioner did file a previous post-conviction relief action in 2014 which was dismissed (wherein he alleged ineffective assistance of counsel for failing to

present mitigation evidence and/or adequately preparing). His current claims under the South Carolina Constitution Article 3 Section 18 are asserted by him as newly discovered evidence wherein he only received proof (See attached Exhibit A) from the State Archives after March 18th 2019 that the law he was convicted under had been searched for and was not found in the archives nor could the archivist prove that any such law was affixed with the great seal of the state of South Carolina as Petitioner argues is mandatory under the state constitution. He would allege that no resolution or act of the state legislature would have "the force of law" unless it bears the great seal of the state and is accurately recorded in the archives as the true law of the State of South Carolina.

- 15) In an effort to verify the 2019 statement he provided to me, I asked the archivist to provide a sworn affidavit as well. (See attached Exhibit B) The court has not had the opportunity to consider that document as would have been done through a hearing or oral arguments upon the matter.
- 16) Further, the court has denied this relief *with prejudice* wherein the State, in its own Return conceded that Habeas petitions must be filed in the original jurisdiction of the South Carolina Supreme Court (especially where the legitimacy of a state statute is challenged). The State requested the action be summarily dismissed because the lower court lacked any jurisdiction to rule on the issue. The Order should at least be without the added burden of the dismissal *with prejudice* therefore tying the hands of the Supreme Court in its original jurisdiction to ever hear the matter.
- 17) In the alternative, after reviewing the court file, I am submitting this affidavit in accordance with further tenets of Cauthen, believing that there are no other meritorious issues to brief. I have been in contact with the office of Appellate Defense prior to signing the Notice of Intent to Appeal and will copy them on all transmissions. I am asking that I be relieved as counsel in this matter. If the court sees fit to hear the petitioner upon evidence that is either newly discovered or should have been originally brought in the jurisdiction of the Supreme Court itself, I would ask that he be appointed appellate counsel.

Further affiant sayeth not.

August 23rd, 2021



SWORN TO and subscribed before me

This 23rd day of August, 2021.

Notary Public for S.C.

My Commission expires: 10/8/2021



Philip B. Atkinson (SC Bar No.: 16686)

601 West Evans Street, Suite 101

Florence, SC 29501

(843) 612-0491

Email: philip@atkinsonattorney.com

Kolby Atkinson
Notary Public, State of South Carolina
My Commission Expires October 8th, 2029



ATKINSON LAW FIRM, LLC

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

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



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

FILED FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2101467

Johneil Richardson

2021 AUG -9 AM 9:33

South Carolina State Of

PLAINTIFF(S)

DORIS DOUGLAS O'HARA
DOCP # 03
FLORENCE COUNTY, SC

DEFENDANT(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

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: _____

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

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:

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-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

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

CERTIFIED: A TRUE AND CORRECT COPY
 Clerk of Court C.P. & GS
 FLORENCE COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2020-CP-21-1467

Johnell Richardson, SCDC #355032,
)
)
) Petitioner,
)
) v.
)
) State of South Carolina,
)
) Respondent.
)

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

2021 AUG - 6 PM 2: 03
 DOMINIQUE O'HARA
 C.C.P. & GS
 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

, South Carolina.

2021 AUG - 6 PM 2: 03
CLERK OF COURT
COURT HOUSE
COLUMBIA, SC

FILED


- 5) During that time that I've been practicing law, I have practiced primarily in the state courts. My primary practice concentrates on matters in the Family Court for the State of South Carolina and, from time to time, on any cases where the clerk selects me as counsel for indigent clients.
- 6) The purpose of the appointment above was to serve as Mr. Richardson's counsel regarding his filing for habeas corpus relief.
- 7) My client filed his petition himself prior to the appointment of his first attorney, Mr. Abbott, and already had one hearing continued before I was even appointed as his successor counsel as listed above.
- 8) By June 9, 2021 the office of the Attorney General had finally been properly served with the pleadings initially (and errantly) filed by the client due to my efforts which prompted their Return and Motion to Dismiss the Petition for Writ of Habeas Corpus along with a proposed Order to the Judge for gaining such relief.
- 9) By June 22, 2021 I began corresponding with the judge and opposing counsel asking for oral arguments in the above-referenced case to indicate what reason, if any, my client could show that the relief requested therein was not a subsequent post-conviction relief action and why those materials could not have been presented under a previous application the client filed on April 10, 2014.
- 10) The judge in this matter did not respond to my request for a hearing or oral arguments and granted the respondent's order dismissing the petition for writ of habeas corpus. Initially, there were some scrivener errors the State made. A corrected copy was sent to the judge before the matter was finalized. The final copy of the Order Dismissing the Petition for Writ of Habeas Corpus was served upon me via mail on August 16, 2021.
- 11) Out of an abundance of caution, knowing from previous conversations with my client that he would intend to appeal any such dismissal, I undertook this filing of a Notice of Intent to Appeal and signed the actual document August 20, 2021.
- 12) Out of an abundance of caution, I also filed a motion to proceed without cost in accordance to Ex Parte Cauthen, 354 S.E. 2d 381, 291 S.C. 465 (1987) completing that on August 23, 2021.
- 13) There was no transcript from any proceedings to be ordered from the court to be provided to the appeals court.
- 14) It is conceded that the petitioner did file a previous post-conviction relief action in 2014 which was dismissed (wherein he alleged ineffective assistance of counsel for failing to

present mitigation evidence and/or adequately preparing). His current claims under the South Carolina Constitution Article 3 Section 18 are asserted by him as newly discovered evidence wherein he only received proof (See attached Exhibit A) from the State Archives after March 18th 2019 that the law he was convicted under had been searched for and was not found in the archives nor could the archivist prove that any such law was affixed with the great seal of the state of South Carolina as Petitioner argues is mandatory under the state constitution. He would allege that no resolution or act of the state legislature would have "the force of law" unless it bears the great seal of the state and is accurately recorded in the archives as the true law of the State of South Carolina.

- 15) In an effort to verify the 2019 statement he provided to me, I asked the archivist to provide a sworn affidavit as well. (See attached Exhibit B) The court has not had the opportunity to consider that document as would have been done through a hearing or oral arguments upon the matter.
- 16) Further, the court has denied this relief *with prejudice* wherein the State, in its own Return conceded that Habeas petitions must be filed in the original jurisdiction of the South Carolina Supreme Court (especially where the legitimacy of a state statute is challenged). The State requested the action be summarily dismissed because the lower court lacked any jurisdiction to rule on the issue. The Order should at least be without the added burden of the dismissal *with prejudice* therefore tying the hands of the Supreme Court in its original jurisdiction to ever hear the matter.
- 17) In the alternative, after reviewing the court file, I am submitting this affidavit in accordance with further tenets of Cauthen, believing that there are no other meritorious issues to brief. I have been in contact with the office of Appellate Defense prior to signing the Notice of Intent to Appeal and will copy them on all transmissions. I am asking that I be relieved as counsel in this matter. If the court sees fit to hear the petitioner upon evidence that is either newly discovered or should have been originally brought in the jurisdiction of the Supreme Court itself, I would ask that he be appointed appellate counsel.

Further affiant sayeth not.

August 23rd, 2021

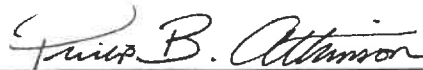


SWORN TO and subscribed before me

This 23rd day of August, 2021.

Notary Public for S.C.

My Commission expires: 10/8/2021



Philip B. Atkinson (SC Bar No.: 16686)

601 West Evans Street, Suite 101

Florence, SC 29501

(843) 612-0491

Email: philip@atkinsonattorney.com

Kolby Atkinson
Notary Public, State of South Carolina
My Commission Expires October 8th, 2021

EXHIBIT A

Exhibit 1



18 March 2019

Mr. Johnell Richardson 355032
McCormick Correctional Institution F3/B/244
386 Redemption Way
McCormick, SC 29899

Dear Mr. Richardson:

I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Tuttle". The signature is written in a cursive style with a large, sweeping initial "S".

Steven D. Tuttle
Deputy Director
Archives & Records Management

EXHIBIT B



15 April 2021

Affidavit of Steven D. Tuttle, Deputy Director for Archives and Records Management, South Carolina Department of Archives and History, 8301 Parklane Road, Columbia, South Carolina 29223.

On 18 March 2019, our agency received a letter from Mr. Johnell Richardson #355032, McCormick Correctional Institution F3/B/244, 386 Redemption Way, McCormick, South Carolina 29899. In this letter, Mr. Richardson asked if 1993 Act No. 184 had been affixed with the Great Seal.

I located the original copy of this act in our security vaults and found that it has 198 pages. I checked each of these pages but could not see an impression of the Great Seal. On 18 March 2019, I wrote Mr. Richardson a letter stating "I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184."

Checking original acts for an impression of the Great Seal is a regular duty performed by our staff as we have received and answered more than 400 requests to do so since November 2017.

Signature: *Steven D. Tuttle*

State of South Carolina

County of Richland

Acknowledged before me on this date: 04-15-2021

Notary Name: *Brenda C. House*
Brenda C. House

My Commission Expires: 01-31-2024

Notary Signature: *Brenda C. House*

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

CERTIFICATE OF MAILING / PROOF OF SERVICE

I, Kolby J. Atkinson, employee of the Atkinson Law Firm, LLC, do hereby certify that on the 23rd day of August, 2021, I deposited in the United States Mail, via first class mail, postage affixed thereto, a certified true copy of the Notice of Appeal and Motion to Proceed Without Costs to the following:


Attorney Michael D. Davidson
South Carolina Attorney General's Office
PO BOX 11549
Columbia, SC 29211-1549
Attorney for the Respondent

Johnell Richardson, SCDC# 00355032
Perry Correctional Institution DY2
430 Oaklawn Road
Pelzer, SC 29669-8704
Petitioner

Attorney Robert Dudek
Attorney Della White
SC Office of Appellate Defense
1330 Lady St
Columbia, SC 29201

Doris Poulos O'Hara
Florence County Clerk
180 North Irby Street
Florence, SC 29501

SWORN TO and subscribed before me
This 23rd day of August, 2021.


Philip B. Atkinson
Notary Public for S.C.
My Commission expires: 6-30-27


Kolby J. Atkinson
601 West Evans Street, Suite 101
Florence, SC 29501
(843) 612-0491
Email: kolby@atkinsonattorney.com



Philip Atkinson <philip@atkinsonattorney.com>

Notice of Intent Package: Johnell Richardson vs. SC Docket No: 2020-CP-21-1467

1 message

Philip Atkinson <philip@atkinsonattorney.com>

Mon, Aug 23, 2021 at 5:33 PM

To: supctfilings@sccourts.org, DPoulos@florenceco.org, michaeldavidson@scag.gov, rdudek@sccid.sc.gov

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 attached: 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 attaching 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



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

FILED FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2101467

Johnell Richardson

2021 AUG -9 AM 9:33

South Carolina State Of

DORIS FOULOS O'HARA

2021 AUG 9 10:30

FLORENCE COUNTY, SC

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:

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

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:

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

Court Reporter

Doris Poulos O'Hara - Clerk of Court

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 IN THE COURT OF COMMON PLEAS
 COUNTY OF FLORENCE FOR THE TWELFTH JUDICIAL CIRCUIT

CERTIFIED A TRUE COPY
 Clerk of Court C.P. & C.S.
 Florence County, S.C.

Johnell Richardson, SCDC #355032,

Case No. 2020-CP-21-1467

Petitioner,

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

v.

State of South Carolina,

Respondent.

2021 AUG - 6 PM 2: 03
 DEPT. OF CORRECTIONS
 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.*

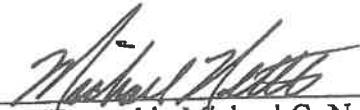
This Court agrees with the Respondent that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Therefore, these

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

 _____, South Carolina.

2021 AUG -6 PM 2: 03
EQUITY FORUMS ONLINE
SCCP & GS
FLORENCE COUNTY, SC

FILED

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

Johnell Richardson,

Applicant,

v.

State of South Carolina,

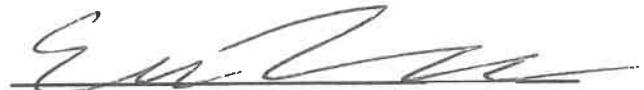
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order Dismissing Petition for Writ of Habeas Corpus** have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

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

This 12th day of August, 2021.



Erik Marcusson
Legal Assistant for Respondent

The Supreme Court of South Carolina

Johnell Richardson, Peitioner,

v.

The State of South Carolina Respondent.

Appellate Case No. 2021-000905

The Honorable Michael G. Nettles
Florence County
Trial Court Case No. 2020CP2101467

ORDER

Pursuant to Rule 204(a), SCACR, the appeal in the above entitled matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina

August 24, 2021

cc:

Philip Bryan Atkinson, Esquire
Michael D. Davidson, Esquire
The Honorable Jenny Kitchings



**ATKINSON
LAW FIRM, LLC**

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

August 23, 2021

Johnell Richardson #00355032
Perry Correctional Institution DY2
430 Oaklawn Road
Pelzer SC 29669-8704

RE: Johnell Richardson vs. State of South Carolina
Docket No: 2020CP2101467

Dear Johnell,

I last wrote to you on June 22, 2021 regarding the state's attempt to have your habeas corpus petition dismissed. Though I requested the Judge allow us oral arguments, that motion was denied, and he signed an Order dismissing the claims in the habeas case as duplicate claims that could or should have been brought during a PCR action. Initially the Judge had been presented with a proposed Order by the state on June 22, 2021 and he signed it on July 6. That Order was forwarded to me on July 15, 2021. By the time I received it the state had sent another letter to the Judge on July 20 telling him they had made a scrivener's error on the copy they wanted him to sign. He reviewed the corrected copy and signed it as well. I have provided you with the corrected Order for your reference and future use. Naturally since you had a PCR you are not entitled to a second and this will end the involvement of the Court of Common Pleas for the 12th Judicial Circuit as to that claim. As I told you, I'm certain that was not the answer that you wanted to hear.

I have filed an appeal for you and will probably be relieved as counsel going forward when you are assigned appellate counsel. However though, the state's attorney made mention in their own brief that claims of this nature for habeas corpus needed to be presented in the original jurisdiction of the Supreme Court. I see no reason why you could not initiate a new habeas corpus petition in the Supreme Court.

Admittedly, the issue you presented is one of first impression for me and many lawyers that I have talked with. There is no doubt that you have evidence now showing that the state is unable to locate the actual copy of the law and therefore also cannot prove that it bears the seal of the great state of South Carolina as required. I would further add that, until you wrote to that director, you never had proof before that was the case. The argument at the county level here would have been how could you have presented such proof when you didn't have notice of the missing law until years later. Therefore, it appears all is not lost at this juncture and some hope

would remain. I was able to get you a notarized copy of a more definitive statement from the director and I will forward that original to you with this letter along with your petition and the State's return as you had asked for. I'm also sending you a copy of the state's brief wherein they give citation as to why these issues are to be brought in the Supreme Court.

At this juncture, there's nothing further I or the Atkinson Law Firm can do for you. I was appointed on this case and the Order and Appeal filing will likely end my involvement as your attorney. You are strongly encouraged to file a new habeas corpus action in the original jurisdiction of the Supreme Court of the State of South Carolina. The appeals filing will allow you to be appointed an attorney that practices in the Appeals Court area alone. I have enjoyed getting to know you through our correspondence as we awaited the court's decision in this area. I wish you the best of luck with presentation of your very novel issue.

Sincerely,



Philip B. Atkinson