

The Supreme Ct. of S.C.  
Daniel E. Sheavouse, Clerk  
PO BOX 11330  
Columbia SC 29211

**RECEIVED**

APR 30 2013

Ret# 2011-CP-42-0883  
S.C. SUPREME COURT  
2013-000589

Date: 4/24/13

Dear Mr. Sheavouse

Please find enclosed for filing my  
written explanation and designation of matter.

Please return me back a filed copy.

Thank you

Sincerely

Billy R. Henson

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**RECEIVED**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Honorable J. Mark Hayes II

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APR 30 2013

S.C. SUPREME COURT.

Case No<sup>#</sup> 2011-CP-42-0903  
2013-000589

Billy Ray Henson ..... Applicant

VS

The State ..... Respondent

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APPELLANT'S WRITTEN EXPLANATION AS  
TO WHY THE LOWER COURT FINDING WAS  
IN ERROR/IMPROPER

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Other counsel of record  
A/A Gen  
Suzanne H. White  
PO BOX 11549  
Columbia SC 29211-1549

Billy Ray Henson<sup>#</sup> 283817  
Unit 4  
McCormick Inst.  
386 Redemption Way  
McCormick, SC 29899

## ARGUMENT

Here, Applicant had argued a DUE PROCESS violation upon his PCR counsel, NOT that he was claiming ineffective assistance of P.C.R. counsel itself pre-se SEE: AMENDED PCR; pg 2 of 3 of the State's final order of dismissal. Also see: Applicant's 59 (e) motion in attached designation of matter.

Applicant further argues that the lower court was in error in dismissing his current PCR when the court ruled that there was no constitutional

right to appointed counsel for collateral review of a conviction citing: Pennsylvania v Finley 107 S.Ct. 1990 and Coleman v Thompson 111 S.Ct. 2546. , when Applicant did not argue a 6<sup>th</sup> Amend claim, only a DUE PROCESS claim under the 14<sup>th</sup> Amend. SEE: Martinez v Ryan 132 S.Ct. 1309. The Applicant argues comparing Martinez Id. there was sufficient reasons warranting him a hearing upon his successive P.C.R application to overcome Aice 409 SE2d at 394 Also see 17-27-90. Applicant argues that the court erred when it did not review his case on a case by case basis SEE:

Case v State 289 SE2d 413 and Franklin  
v Maynard 588 SE2d 604. Therefore, due  
to the above arguments the one year  
statute of limitation and the res-  
judicata should not have also been  
applied to bar his current PCR.

WHEREFORE: This court should hear full  
argument upon this issue, where Applicant's  
case should be remanded ~~back~~ to the lower  
court for a full and fair hearing per.  
Martinez v Ryan 132 S.Ct. 1309.

Date: 4/23/13

Respectfully Submitted  
sp. Billy R. Henson

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS  
Hon. J. Mark Hayes II

APR 30 2013

S.C. SUPREME COURT

Case No<sup>#</sup> 2011-CP-42-0903  
2013-000589

Billy Ray Henson

Applicant

vs

The State

Respondent

APPELLANT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the record on appeal.

- (1) Applicant's amended PCP - 2 pgs
- (2) State's final order of dismissal - pg 2 of 3
- (3) Applicant's 59 (e) motion - 3 pgs

I certify that this designation contains no matter that is irrelevant to this appeal.

DATE: 4/24/13

Respectfully submitted  
Billy R Henson

Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS  
# 2011 - CP - 42 - 0903

Billy Ray Henson # 283817  
Applicant

NOTICE AND MOTION  
FOR  
59 (e)

VS

The State  
Respondent

NOW COMES the above named Applicant who moves  
this Hon. Court in the above entitled matter.

The Applicant received the "FINAL" order  
of dismissal Dec 7, 2012 which was signed  
by Judge Hayes Nov 28, 2012.

### ARGUMENT

- (1) The Applicant would direct this courts attention  
to the following issues that was not add-  
ressed on. The final order of dismissal.

Applicant AMENDED P.C.R. should  
have been fully ruled on as stated

CLERK OF COURT  
SPARTANBURG COUNTY  
2012 DEC 19 AM 11:26  
H. HUFF BLAUNLEY

in his return to the Respondent's conditional order of dismissal, and his amended P.C.R. Which Applicant re-argue and further state, that he should not be barred / held liable for the delay by the Clerk of Court in filing and sending the State's order of dismissal out to him until June 15, 2012, the date Applicant rec'd it.

When in fact the Clerk of Court did not even file the order until June 8, 2012 when the Judge had signed the order May 25, 2012.

- (2) Here Applicant never claimed effective assistance of P.C.R. Counsel SEE: Amended PCR (1) of pg 1 But he did claim due process.
- (3) Further this court failed to address/rule upon Applicant's claims (1) (2) and (3) of

Applicant AMENDED P.C.R., which  
Applicant re-argue in full.

- (4) In Marlar v State 653 SE2d 266  
the S.C. Supreme Court made it clear that  
a P.C.R. judge must make specific findings  
of fact and state expressly the conclusions  
of law relating to EACH issue

For the foregoing reasons the Applicant respectfully  
requests that this court to direct the entry of  
a new judgment, alter, amend and reconsider  
the issues upon his 59(c) motion, and its order  
of dismissal.

Date: 12-12-12

Respectfully Submitted  
s/ Billy Henson

CLERK OF COURT  
SPARTANBURG COUNTY  
2012 DEC 19 AM 11:26  
M. HOVE DEANLEY

PROOF OF SERVICE

I Billy R Henson certify that I have served my notice / motion for 59(c) upon the below persons. By placing the above said in the Mc Corr. Inst. mail room on this 12 day of Dec 2012 to be placed in the U.S. mail with postage prepaid

M. Hope Blackley, Clerk  
PO BOX 3483  
Spartanburg, SC 29304-3483

A/A Gen  
Suzanne H. White  
PO BOX 11549  
Columbia, SC 29211-1549

SWORN before me  
this 12 day of Dec, 2012

Joyce L Young  
Notary Public  
my Commission Expires

10-11-2021

s/ Billy R Henson  
Applicant

CLERK OF COURT  
SPARTANBURG COUNTY  
2012 DEC 19 AM 11:26  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS  
# 2011 - CP - 42 - 0963

Billy Ray Henson # 283817  
Applicant

## AMENDED PCR

vs

The State

Respondent

Now comes the above named Applicant who moves this Hon. Court in the above entitled matter.

(1) DUE PROCESS - 14th Amend. per U.S. and S.C. Const. during Applicant's first PCR.

The Applicant is not claiming ineffective assistance? Cf. counsel see: Pennsylvania v Finley 107 S.Ct. 1990 and Coleman v Thompson 111 S.Ct. 2546. Because one does not have a right to counsel for collateral review of his/her conviction.

But one does have a **RIGHT** to DUE PROCESS in P.C.R. matters. Which P.C.R. counsel, O. Cyrus Hinton prejudice Applicant, when he denied Applicant to **AMEND** his first PCR # 04 - CP - 42 - 1567 to show the below issues, as he was entitled to per. 17-27-90.

(1) Trial counsel objection/argument on prejudicial effect would outweigh their probative value was misplaced. When the State intended to use Applicant's two prior convictions, both robberies, as impeachment evidence against Applicant.

Although, the judge's ruling was that Applicant's

FILED IN COURT  
SPARTANBURG COUNTY  
JUN - 7 AM 9:35  
MORNING  
CLERK  
JURY



dismissed. Applicant asserts that he is entitled to a return to his amended post-conviction relief application that was submitted May 30, 2012.

Respondent submits that the State's Return and Motion to Dismiss was submitted on May 23, 2012, while the amendment was not received by Respondent until June 7, 2012. Furthermore, nothing in the Applicant's amendment is sufficient to warrant a hearing on his successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

This Court has reviewed Applicant's responses to the State's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings and amendment to the application, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court further finds that Applicant's current Application is successive to Applicant's previously filed application, Applicant's current application was filed outside the statute of limitations, and the application is barred by *res judicata*.

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Case Nos<sup>#</sup> 2011-CP-42-0903  
2013-000589

Billy Ray Henson

Applicant

vs

The State

Respondent

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PROOF OF SERVICE

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I, Billy R Henson certify that I have served the below person(s) my written explanation and designation of matter in the above case. By placing the above said in the McCarr. Inst. mail room on this 24 day of April 2013 to be placed in the U.S. mail with postage prepaid.

Clerk Daniel E. Shearouse  
PO. BOX 11330  
Columbia SC 29211

SWORN before me  
this 24 day of April 2013

[Signature]  
Notary Public

my Commission Expires 12-16-2019

s/ Billy R Henson

LEGAL MAIL  
MAIL ROOM

RECEIVED BY THE WARDEN  
INSPECTED THIS ITEM. THEREFORE THE  
DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS.  
WARDEN  
MCCORMICK CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS

**RECEIVED**

APR 24 2013

MCCI  
MAIL ROOM

The Supreme Ct. of S.C.  
Daniel E Shearouse Clerk  
P.O. Box 11330  
Cola. S.C. 29211

B1119 Henson # 283817 H-4-B-150  
MCCI  
386 Redemption way  
McCormick SC 29889