

# Non-Death Penalty PCR Action

# Overview

- Convictions applicable: (1) State Court General Sessions; (2) Magistrate Court; (3) Municipal Court
  - Magistrate and Municipal Court present unique challenges based on lack of records, etc.
- PCR Applicant does not have to be incarcerated or show negative impact from conviction to pursue PCR
  - Majority are filed by individuals convicted in state court that are currently incarcerated

- PCR Act (17-27-20) outlines basis on which PCR can be argued. Most frequent include:
  - Ineffective assistance of defense counsel
  - Prosecutorial misconduct
  - Newly discovered evidence
  - Illegal sentence
  - Unlawful detainment past expiration of term and offender entitled to immediate release (if just arguing projected date of release is wrong, it must be argued to SCDC)

Defendant files PCR application in the county of conviction

- If State grand jury conviction, application filed in County where venue was established (where guilty plea or trial occurred)

Clerk of Court forwards PCR Application to Attorney General and Applicable Solicitor's Office  
(Clerk will often file the application even if there is an order prohibiting defendant from filing another PCR)

Some Clerks forward

- on regular basis; and

- application and all underlying general sessions records (sentencing sheet, indictment, arrest warrant, motions and orders)

Some Clerks forward

- on regular basis; and
- application only

Some Clerks forward

- Sporadically throughout the year; and
- application only

AG opens "Case"

AG receives PCR Application from Clerk of Court

### AG Screens Application

Determine whether there are any procedural bars they can use to argue PCR should not go forward:

- (1) untimely (filed outside one year statute of limitation under S.C. Code Section 17-27-45); OR
- (2) impermissibly successive application (new evidence or belated appellate review of first PCR would be permissible)

### AG Requests Clerk's records

- If received underlying general sessions records, then requests → applicable Exhibits
- If only received PCR application, then requests → Sentencing sheet + Indictment + Arrest Warrant + Exhibits

AG Determines Applicable Internal Track for Case

Summary Dismissal Track

Hearing Track

# Non-Death Penalty PCR Action

# Summary Dismissal Track

Defendant not entitled to appointment of counsel

(Sometimes Clerk will appoint anyway)



AG files Return and Motion to Dismiss; and submits a proposed Conditional Order to Dismiss to the Chief Administrative Judge

As attachments to the "Return" (i.e., response to the PCR Application), AG includes: (a) entire lower court record and transcripts; (b) Any prior PCR actions; and (c) Any prior Federal Habeas actions (federal equivalent of State PCR action)

AG serves via U.S. mail: (1) Clerk of Court, Judge, and (2) PCR Applicant

Court enters Conditional Order of Dismissal (most common)

Or

Court requests the matter be set for a hearing (rare)  
(Start at top of "Hearing Track" document for next steps)

AG serves Conditional Order of Dismissal on Applicant

(AG obtains affidavit that Applicant was personally served)

**NO Response from Applicant**

Response from Applicant

(Applicant has 20 days from date of service to respond)

AG reviews Applicant Response to Conditional Order of Dismissal to determine:  
Has Applicant provided sufficient reason(s) to overcome the procedural bar?

No

AG submits proposed Final Order of Dismissal to the Court analyzing Applicant's response and explaining why it is insufficient to overcome procedural bar

Yes,  
AG asks for:

Motion to Dismiss Hearing

Or  
Full Hearing  
(Start at top of "Hearing Track" document for next steps)

Court decides:

No Hearing

Or

Hearing on Dismissal

**AG submits proposed Final Order of Dismissal to the Court**

AG asks Chief Administrative Judge appoint counsel for applicant

Motion to Dismiss Hearing

**Court signs final Order dismissing PCR Application**

Court grants Motion and signs final Order dismissing PCR Application

Court denies Motion (Start at top of "Hearing Track" document for next steps)

Applicant can file

Motion to Reconsider

And/Or

Appeal to S.C. Supreme Court (243(C) SC. App.Ct. Rules)

Did Applicant respond to conditional Order of Dismissal (top of page)?

No

Yes

**Court summarily dismisses Applicant's appeal**

Court requests reason why lower court's dismissal was improper if Applicant did not include it in the Appeal filed

Court summarily dismisses appeal

Or

Court allows appellate process to continue if Court believes there is sufficient evidence of improper dismissal at lower court (Start at top of "Appeal Decision from PCR Hearing" document for next steps)

*Cases Closed (AG closes the PCR case when it get to this stage. AG opens a new file for the PCR Appeal, if filed)*

## AG Requests Appointment of Attorney for Defendant

AG sends form letter to Clerk of Court requesting they appoint attorney for the defendant (sometimes Clerk will appoint w/o AG request)

## AG Requests Applicable Documents, Contact Witnesses, Calendar due date

- Requests from Court Administration (court reporters) - Transcripts from applicable pre-trial, trial, guilty plea, or post-trial hearings. Court reporters have 60 days to provide, but can request extension.
  - \*Issue exists with court reporters not having to keep transcripts more than 5 years.
- Contact applicable witnesses depending on claim made in PCR application (e.g., defense counsel, prosecutor, SCDC, etc.)
- Calendar "return" due date (if arises from guilty plea, 60 days to respond, if arising from trial, 90 days to respond S.C. Civ. Pro. 12(a))

## AG files "return" with the Clerk of Court (Response to PCR Application)

Requests (1) Hearing OR Requests (1) Hearing, and (2) if needed, more definitive statement

Applicant's Attorney Files Amended PCR Application

AG files Amended Return

(\*As long as AG receives Amended Application within time before the hearing)

## Pre-Hearing Activities

- AG must (1) coordinate with the Chief Administrative Judge to create the docket; (2) subpoena all witnesses to attend; (3) coordinate with SCDC for transport of Defendant to hearing (or scheduling virtual hearing\*)
  - \*SCDC's lack of quality technology turned some judges off from holding virtual hearings. Inmates in other states/federal prisons with better technology reap benefits of efficiencies gained from virtual hearings.

## Full Evidentiary Hearing

(Includes AG; Defendant, Defense Counsel, Witnesses, Court Personnel)

Relief Granted

(1) New Trial; (2) Resentencing (uncommon); or (3) Dismissal of charges (rare - if violation of the interstate agreement detainer act)

Relief Denied

## Court Enters Final Order

(Court signs order it drafted, or in most cases, proposed order from AG)

- Court notifies parties of result and enters formal written order outlining facts, specific findings of fact, and conclusions of law (17-27-80)  
NOTE: Majority of the time the court requests AG staff draft the Order; on some occasions, court will request AG and defense counsel both draft orders for the court to decide between (or to use pieces of each)

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## Either Party May File Motion to Reconsider, Alter, or Amend Court's Order

(Only have 10 days after Order entered to file. Generally the non-prevailing party files. Prevailing party may file if they have an issue with the wording of the Court's Order)

Defense counsel with defendant reviews and determines whether to Appeal

AG's Appellate Review Panel reviews and determines whether to Appeal. Panel consists of senior appellate attorneys and attorneys with experience at one of the two appellate courts (e.g., staff previously employed at appellate courts)

***Start at top of "Appeal Decision from PCR Hearing" document for next steps***

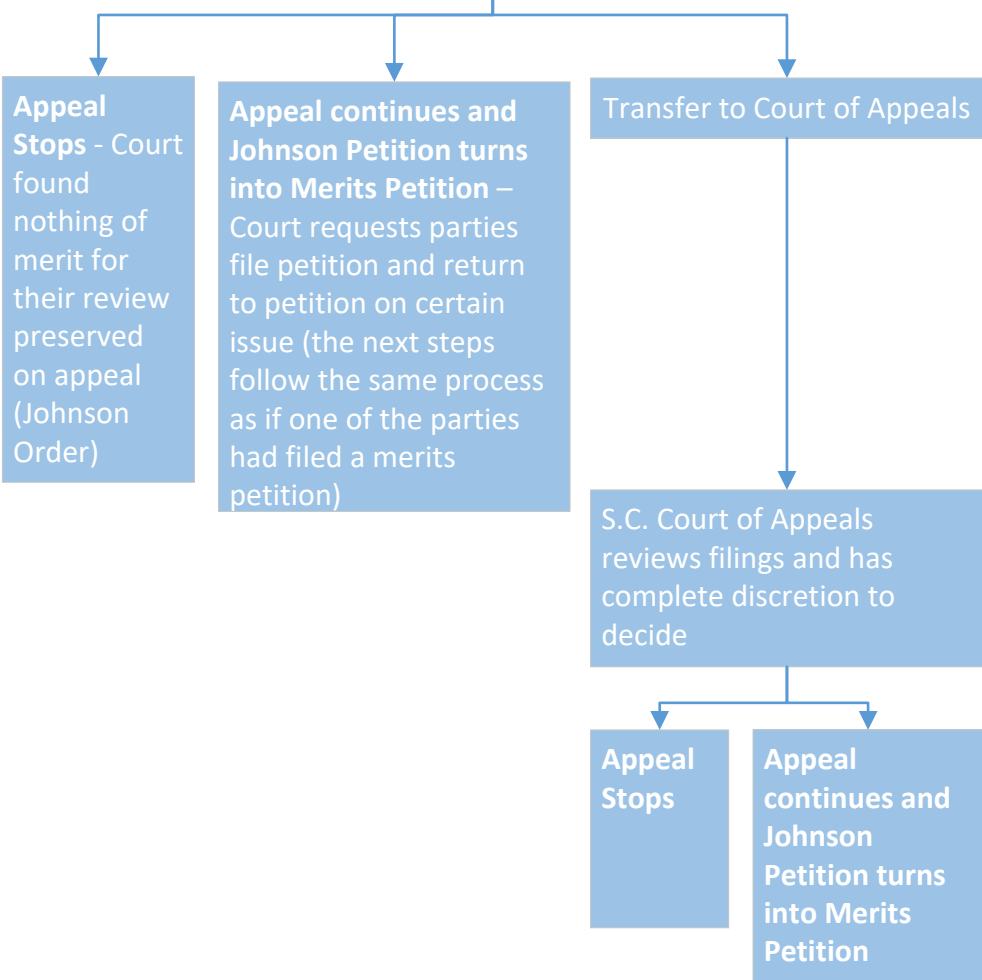
# Appeal Decision from PCR Hearing

Defense files (State would never file this)

- **Johnson Petition** (Defense counsel may file this petition to say they see no issue of merit preserved for appeal, but the defendant requested they file an appeal so this is their best argument); and
- **Appendix** (entire lower court record)

Non-appealing party files nothing

S.C. Supreme Court reviews filings, has complete discretion to decide



Party appealing (Appellant) files

- **Merits Petition** (argues there is an issue of merit preserved they want the court to determine) or **Johnson Petition Kickback** (Court finds issue in Johnson Petition and lower court record, then requests both parties file petition on that issue); and
- **Appendix** (entire lower court record)

Other side files Return

S.C. Supreme Court reviews filings and has complete discretion to decide

