

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George M. Adams, #181283,

Applicant,

v.

State of South Carolina,

Respondent

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO. 2013-CP-40-01336

) ORDER DENYING RULE 60(b)(5),
) SCRPC, MOTION FOR RELIEF
) FROM AMENDED FINAL ORDER
) OF DISMISSAL

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SC Court of Appeals

~~This matter comes before this Court by way of Applicant's "Motion" filed April 29, 2021, asking this Court to issue a decision on his "Return to Order Denying Applicant's SCRPC 60(b)(5)." This case was restored to the active roster by Consent Order dated July 7, 2021, for purposes of considering this "Return to Order Denying Applicant's SCRPC 60(b)(5)."~~

I.

~~Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. On September 17, 1991, Applicant waived presentment to the Richland County Grand Jury and pled guilty to First-Degree Burglary (91-GS-40-5731) and Larceny (91-GS-40-5730). Applicant was represented by Kathy Gettys, Esquire. The Honorable William Byrd Traxler, Jr., sentenced Applicant to fifteen years' imprisonment, suspended upon the service of twenty-four months' imprisonment followed by five years of probation. Applicant did not appeal.~~

In October 1992, the Richland County Grand Jury indicted Applicant for Armed Robbery (92-GS-40-11316) and Murder (92-GS-40-11317). William M. Nettles, Esquire, and Franklin Draper, Esquire, represented Applicant. On June 23, 1994, a jury convicted Applicant as indicted. The Honorable L. Henry McKellar sentenced Applicant to consecutive terms of life imprisonment

for Murder and twenty-five years for Armed Robbery. His direct appeal was affirmed on April 29, 1996. (State v. Adams, Op. No. 24420).

On May 14, 1996, Applicant filed an application for post-conviction relief (PCR) challenging the 1994 convictions (1996-CP-40-1786). An evidentiary hearing was held on October 17, 2000, before the Honorable L. Casey Manning. Applicant was present and represented by J. Preston Strom, Jr., Esquire, and Mario Pacella, Esquire. On August 20, 2002, Judge Manning denied and dismissed Applicant's PCR application with prejudice.

Applicant filed a second PCR application on July 22, 2004 (2004-CP-40-3481). On August 4, 2005, the Honorable J. Ernest Kinard, Jr. denied and dismissed that application.

Applicant filed a third PCR application on September 26, 2006 (2006-CP-40-05620). On October 1, 2007, the Honorable G. Thomas Cooper, Jr. granted Applicant a belated Austin review of his prior PCR action but denied and dismissed the remainder of the application. Thereafter, counsel for Applicant filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). On November 25, 2009, the Court of Appeals denied his Petition.

On March 5, 2013, Applicant filed the current PCR application challenging his 1991 plea to Burglary. Pertinently, Applicant alleged his "1991 conviction [was] being used to adversely affect his current sentence." The State filed a Return and Motion to Dismiss, asserting the application was barred by the statute of limitations and laches. On April 9, 2014, this Court issued a Conditional Order of Dismissal granting Applicant twenty days to show why the Order should not be final.

On May 7, 2014, Applicant filed a Return to the Conditional Motion to Dismiss, contending he rejected a twenty-eight-year plea offer on his 1992 Murder charge because he believed he would be parole-eligible after twenty years if convicted of Murder. Applicant asserted he received a letter

from the South Carolina Department of Probation, Parole and Pardon Services on December 21, 2012, informing him he was not eligible for parole because he was a subsequent violent offender. Furthermore, Applicant asserted he was not aware he was ineligible for parole prior to receiving the letter. Finally, he averred he would have accepted the twenty-eight-year plea offer on the Murder charge or negotiated a plea to remain parole eligible if he had known the prior conviction would make him ineligible for parole. Applicant requested an evidentiary hearing to establish this was new information that he did not discover until December 2012 and to show his application was not barred by the statute of limitations or laches.

On February 17, 2015, this Court issued a Final Order of Dismissal, finding Applicant failed to respond to the Conditional Order of Dismissal within the twenty-day response period.

This Court further determined that after reviewing the pleadings, Applicant failed to show a sufficient reason why the Conditional Order of Dismissal should not become final.

On March 4, 2015, Applicant filed a Motion to Amend Judgement reiterating his prior arguments and asserting he timely mailed the Return to the Richland County Clerk of Court for filing. Applicant further asserted he filed the 2013 application promptly upon learning he was not parole-eligible and requested an evidentiary hearing.

On May 21, 2015, this Court issued an Amended Final Order of Dismissal addressing the allegations raised in the Return to Conditional Order of Dismissal. This Court found (1) Applicant did not submit sufficient evidence to establish after-discovered evidence, (2) Applicant was complaining of a collateral consequence, which is not cognizable under the PCR Act, and (3) no new ground for relief existed that could not have been raised in the prior applications.

On June 23, 2015, Applicant filed a Notice of Appeal. That same day Applicant filed a Motion Pursuant to Rule 60(b) with this Court, again reiterating he would have accepted the plea offer on the Murder charge if he had been properly advised that he would be ineligible for parole.¹

On October 1, 2015, the South Carolina Supreme Court dismissed Applicant's appeal for failure to provide an explanation as required by Rule 243(c), SCACR. The matter was remitted on September 21, 2015. Thereafter, on July 19, 2018, this Court issued an Order Denying Applicant's Rule 60(b) Motion.

On April 29, 2021, Applicant filed the current Motion, again raising his argument that when he rejected the plea offer for his 1992 Murder charge, he did not know he was ineligible for parole due to his 1991 plea. Counsel for Petitioner further averred a Rule 60(b)(5) Motion was previously filed at Petitioner's request, wherein he asserted he was entitled to an evidentiary hearing pursuant to Coats v. State, 352 S.C. 500, 575 S.E.2d 55 (2003).² Petitioner asserted the Rule 60(b)(5) Motion was outstanding and asked this Court to decide the matter. The April 2021 Motion was set for a hearing on June 15, 2021, "regarding an unresolved Return to Order Denying Applicant's Rule 60(b)(5) motion, submitted October 1, 2018." On July 7, 2021, the Court issued a Consent Order reviving this action and setting it for a status conference.

II.

In his April 2021 Motion, Applicant asks this Court to consider his "outstanding" Rule 60(b)(5) Motion that, according to the Consent Order restoring this case to the roster, was filed on October 1, 2018. Although this Motion has not been previously filed with the Court, this

¹ Notably, in this Motion Applicant asserts counsel in the 1992 Murder trial was ineffective for not advising him he would be parole-ineligible. However, his 2013 PCR application only challenged his 1991 Burglary conviction.

² This Rule 60(b)(5) Motion, however, does not appear in the Court's file.

Court has a copy of a "Return to Order Denying Applicant's SCRPC 60(b)(5)," along with a cover letter from Applicant's counsel to the Richland County Clerk of Court dated October 1, 2018,³

As a threshold matter, the "Return to Order Denying Applicant's SCRPC 60(b)(5)" does not comply with Rule 11 of the South Carolina Rules of Civil Procedure. Pursuant to the Rule, "[e]very pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated." The "Return to Order" is an unsigned document that does not contain the name and address of an attorney licensed to practice law in South Carolina; thus, it does not comply with Rule 11. Admittedly, counsel for Applicant wrote in his cover letter, "I am filing this as my Motion on his behalf." However, the "Return to Order" itself is unsigned, and Counsel's cover letter cannot act as a substitute for complying with Rule 11. Thus, this "Return to Order" is not a proper filing before this Court.

III.

Although the October 2018 "Return to Motion" is not properly pending before this Court, this case has been restored to the active roster for purposes of considering this "Return to Motion." Out of an abundance of caution, this Court will analyze whether Applicant would be entitled to any relief under the unfiled "Return to Order."

In his "Return to Order," Applicant again asserts, "1994 trial counsel was ineffective for improperly advising him that he would be parole eligible on the murder charge." Citing Rule 60(b)(5) of the South Carolina Rules of Civil Procedure, Applicant asserts (1) the Court's orders are void, (2) the Orders fail to cite supporting authority, (3) his claim was "within Rule providing evidence of material fact," (4) the allegations of an unsigned proposed order "fail to appropriately

³ These documents are attached to this Order for reference.

consider and refute exhibits/dates on the allegation asserted in the application for post-conviction relief motion for new trial," and (5) all prior orders "should be void until deleting all reference to Applicant's 1991 guilty plea."

Rule 60(b)(5) provides that the Court may relieve a party from a final judgment when "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." The movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991).

Construed liberally in Applicant's favor, Applicant has failed to set forth any evidence or allegations that would support relief under Rule 60(b)(5). Notably, Applicant is not asserting that any judgment against him has been satisfied, released, or discharged; any prior judgment against him has been reversed or otherwise vacated; or that it is no longer equitable for any judgment against him to have prospective application. Rather, Applicant is seeking relief from his prior conviction, asserting he would have accepted a plea offer on his Murder charge if he had been properly advised he would not be eligible for parole. The PCR Act is the appropriate mechanism for challenging a prior conviction, not Rule 60(b)(5).⁴ Because Applicant has failed to allege cognizable relief pursuant to Rule 60(b)(5), his Motion is **Denied**.

To the extent Applicant's "Return to Order" can be construed as asserting the prior orders are void pursuant to Rule 60(b)(4), this Court sees no basis for vacating the Orders. See Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) ("Generally, a judgment is void only if a court acts without jurisdiction."). The circuit court clearly has subject

⁴ Applicant has in fact utilized the PCR Act to challenge his prior convictions—including in this current action.

matter jurisdiction to issue orders in PCR actions, and Applicant has not alleged that the Court lacked personal jurisdiction over him. Thus, to the extent Applicant's "Return to Order" can be construed as a Motion pursuant to Rule 60(b)(4), the Motion is **Denied**.

IV.

Although couched as a Rule 60(b)(5) Motion, Applicant's "Return to Order" is best construed as a Motion to Reconsider pursuant to Rule 59(e), SCRPC. Effectively, Applicant asks this Court to consider, yet again, whether he is entitled to an evidentiary hearing on his claim that the statute of limitations and laches should not prevent his current application from going forward. His basis for this contention is that he did not learn he was ineligible for parole until December 2012. However, any effort to persuade this Court to reconsider its May 2015 Amended Final Order of Dismissal is untimely. See Rule 59(e), SCRPC (providing a motion to alter or amend must be served no later than 10 days after receipt of written notice of the order's entry). Applicant's remedy for any perceived errors in the Amended Final Order was to appeal that Order.⁵ See Tench v. S.C. Dep't of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) ("A party may not invoke [Rule 60(b)(5)] where it could have pursued the issue on appeal."). Further, this Court has previously considered this argument three times: following the filing of Applicant's May 2014 Return to the Conditional Order of Dismissal, Applicant's March 2015 Motion to Amend Judgment, and Applicant's June 2015 Rule 60(b) Motion. This Court declines to reconsider this argument a fourth time.

⁵ Although Applicant did appeal that Order, he failed to provide an adequate reason for the appeal to proceed as required by Rule 243(c), SCACR, prompting the South Carolina Supreme Court to dismiss his appeal. Applicant cannot now utilize a Rule 60(b)(5) motion in an attempt to revisit his arguments related to the 2015 Amended Final Order of Dismissal.

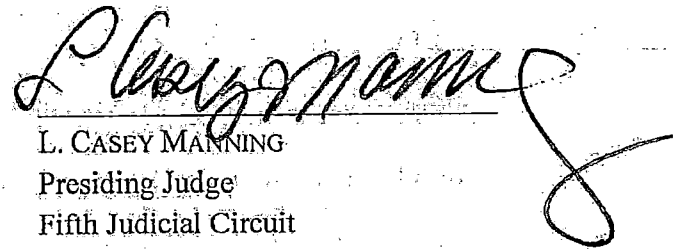
To the extent Applicant's "Return to Order" can be construed as a motion to reconsider this Court's denial of Applicant's June 2015 Rule 60(b) Motion, this Court has previously set forth the reasons Applicant is not entitled to relief pursuant to Rule 60(b)(5) and Rule 60(b)(4).

V.

The "Return to Order" was not properly filed and thus is not pending before this Court. To the extent this Court is being asked to consider the merits of the "Return to Order," this Court finds Applicant has failed to allege any facts that would entitle him to relief pursuant to Rule 60(b)(5) or Rule 60(b)(4). To the extent Applicant asks this Court to reconsider its Final Order of Dismissal with Prejudice, such motion is untimely, and Applicant's remedy for any perceived error was a direct appeal. Therefore, Applicant's "Return to Order Denying Applicant's SCRCP 60(b)(5)" is

DENIED.

AND IT IS SO ORDERED this 28 day of June, 2022.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina