

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Hon. R. Keith Kelly, Presiding

[2020-CP-42-1182]

Reginald Byrd -- Appellant,

-vs-

State of South Carolina -- Respondent,

NOTICE OF APPEAL

Reginald Byrd
SCDC# 209137
Tyger River Corr. Inst.
200 Prison Rd.
Enoree, SC. 29335

Appellant, pro-se

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JUL 18 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

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Appeal from Spartanburg County

Hon. R. Keith Kelly, Presiding

[2020-CP-42-1182]

Reginald Byrd -- Appellant,

-vs-

State of South Carolina -- Respondent,

NOTICE IS HEREBY GIVEN, the above captioned Appellant appeals the Final Order of Dismissal that was issued by the Honorable R. Keith Kelly on June 27, 2022 and received by Appellant on June 30, 2022.

A copy of the Order is attached hereto.

Respectfully Submitted,

1s/ Reginald Byrd
Reginald Byrd

Appellant, pro-se

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Reginald Byrd, #209137,
Applicant,

) Case No.: 2020-CP-42-01182
)
)

v.

) **FINAL ORDER OF DISMISSAL**
)
)

State of South Carolina,
Respondent.

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Reginald Byrd on March 30, 2020. Respondent moved to summarily dismiss the application on January 18, 2022, because it is untimely, successive, and failure to establish a *prima facie* case of newly discovered evidence, as it relates to his allegations concerning the missing Great Seal.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated March 4, 2022, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not be finalized. Applicant was personally served with this conditional order of dismissal on March 30, 2022, as evidenced by the attached affidavit of personal service.

On February 8, 2022, Applicant filed a document entitled "Applicant's opposition and reply to the Court's conditional order." In this response, Applicant states that the absence of the great seal renders the law invalid and unenforceable. Applicant claims this application should be treated as timely because the failure to raise this issue in the prior PCR action was a result of prior PCR Counsel, not Applicant's own neglect. Applicant claims the discovery of the missing great seal constitutes newly discovered evidence and is not barred for untimeliness.

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successiveness. Applicant claims that the State presumably knew about the missing great seal prior to Applicant's trial and, accordingly, the State committed fraud upon the Court, and Applicant is entitled to relief as a result.

This Court has reviewed the response in full and finds it is not sufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not adequately shown why he is entitled to relief based upon newly discovered evidence. Though Applicant reiterates his recent discovery of the missing Great Seal, this does not entitle him to the relief sought. Applicant's discovery does not constitute newly discovered evidence, because this evidence remained discoverable through exercising reasonable diligence to Applicant in prior PCR action. Additionally, Applicant filed a previous collateral action where he could have raised this allegation. Accordingly, this Court finds Applicant has not overcome his procedural hurdle in establishing why the conditional order of dismissal should not take effect.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was found guilty at trial on December 16, 1993. The application was therefore due on December 17, 1994. This application was filed on March 30, 2020, well beyond the statutory filing period. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie*

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showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it is untimely, successive, and failure to establish a *prima facie* case of newly discovered evidence, as it relates to his allegations concerning the missing Great Seal. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice.

This court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 27th day of June, 2022.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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