

IN THE SOUTH CAROLINA SUPREME COURT
OF APPEALS...

APPEAL FROM BERKELEY COUNTY
PCR COURT...

CASE ACTION NUMBER: 2019-CP-08-00806
GARY GRANT V. STATE OF SOUTH CAROLINA

GARY L. GRANT #280988 PETITIONER

V.

STATE OF SOUTH CAROLINA RESPONDENT

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S.C. SUPREME COURT

NOTICE OF APPEAL

THE PETITIONER, GARY L. GRANT, APPEALS THE
DECISION OF THE SOUTH CAROLINA PCR COURT
OF BERKELEY COUNTY DENIAL OF A POST CONVICTION
RELIEF ACT, BEFORE THE HONORABLE JUDGE
JENNIFER B. MCCOY, WHICH WAS ORDER ON
JULY 18TH, 2022. PETITIONER RECEIVED SAID
ORDER BY THE CLERK OF COURT OF BERKELEY
COUNTY ON AUGUST 3RD, 2022... THIS
NOTICE OF APPEAL IS TIMELY FILED ON

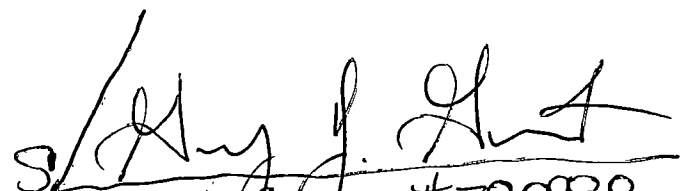
THIS DAY OF AUGUST 4TH, 2022 BY THE PETITIONER
IN THIS MATTER, DATE: AUGUST 4TH, 2022

PATRICIA A. HOWARD, CLERK OF COURT
FOR THE SOUTH CAROLINA SUPREME COURT
OF APPEALS

OTHER COUNSEL FOR THE RECORD
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COLUMBIA, S.C. 29211


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County Grand Jury did not meet in February of 2007, in order to indict him. Additionally, Applicant argued that the court lacked subject matter jurisdiction to convict him due to his indictments being allegedly void, as well as the indictment for murder was allegedly void because it allegedly lacked the specific time and place in the indictments.

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.

Subject matter jurisdiction and sufficiency of the indictment are two distinct concepts. An indictment is a notice document, and any insufficiency or defect in the indictment must be challenged before the jury is sworn. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Whether the indictment could be made more certain is irrelevant. *Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010). An indictment is sufficient when the offense charged is stated with sufficient certainty to enable a court to know what judgment to pronounce and the defendant to know what he is called upon to answer, and when it apprises the defendant of the elements of the offense that are intended to be charged. *Id.* (citing *Gentry*, 363 S.C. at 102-103, 610 S.E.2d at 500). While Applicant may raise his claims of jurisdiction at any time, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499.

Applicant’s assertion that defective indictments deprived the court of jurisdiction over his case is without merit. First, the indictments were not defective. They state the date, the county, the specific actions constituting the crime, the victim’s identity, and the code section allegedly violated. Second, even if they were defective, the time to challenge them was before trial, not fifteen years later in an action for post-conviction relief. Finally, Applicant has presented no evidence whatsoever to support his claim that the court lacked jurisdiction. He was properly

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indicted by a Berkeley County Grand Jury that met during the February 2007 term of court, convicted in the Berkeley County Court of General Sessions for a criminal offense committed in Berkeley County. Accordingly, the court had proper jurisdiction.

Furthermore, this Court finds Applicant's claim of newly discovered evidence must be summarily dismissed because Applicant has failed to make a *prima facie* showing he is entitled to relief for his claim. A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). To prevail, Applicant must show the newly-discovered evidence:

- (1) is such that it would probably change the result if a new trial were granted;
- (2) has been discovered since the trial;
- (3) could not in the exercise of due diligence have been discovered prior to the trial;
- (4) is material; and
- (5) is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Applicant has not adequately shown why he is entitled to relief based upon newly discovered evidence. Even if Applicant's allegations concerning the indictments and subject matter jurisdiction passed legal muster, he has failed to show why issues with the charges themselves and the indictments could not have been discovered through reasonable diligence before trial or before his first post-conviction relief proceeding, how this is material, or how it

would have changed the results of the proceedings. Accordingly, this Court finds the application shall remain dismissed for failure to establish a *prima facie* case of newly discovered evidence.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on August 20, 2007, and the records before this Court show that his direct appeal was dismissed on July 27, 2012. The current application was not filed until March 29, 2019—six years after the one-year statutory filing period expired. Thus, the Court shall dismiss the matter as barred by the statute of limitations.


Finally, 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* 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 for untimeliness and successiveness. 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 18 day of July, 2022.



THE HONORABLE JENNIFER B. MCCOY
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

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S.C. SUPREME COURT

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