

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
)  
)  
Robert Heydman, #330872, )  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-42-01473

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Robert Heydman on May 11, 2021. Respondent made its return, requesting the application be summarily dismissed.

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2007, the Spartanburg County Grand Jury indicted Applicant for murder (2007-GS-42-4087). The charge arose from the stabbing of the victim after the victim's ex-wife, who had reconciled with victim and befriended Applicant, informed Applicant of how abusive the victim was towards her. (App.137; 159-60). The victim was found in bed with a knife through his chest, battered until he was unrecognizable, with blood all over the walls and on the ceiling. (App. 85-89). William McPherson, Esquire represented Applicant. Solicitor Barry Barnette and Assistant Solicitor Jennifer Jordan, Esquires, prosecuted the case. On September 24, 2008, Applicant proceeded to trial before the Honorable Paul Burch and a jury. On September 26, 2008, Applicant was found guilty as charged and Judge Burch sentenced Applicant to life imprisonment.

A timely notice of appeal was submitted and an *Anders* brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Petitioner's convictions.

FILED  
2022 JUL 17 PM 2:39  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

*Heydman*, Op. No. 2011-UP-269 (S.C. Ct. App. filed June 8, 2011). The remittitur was issued on June 24, 2011.

***First PCR Action: (2011-CP-42-2966)***

Applicant filed his first PCR application on July 8, 2011, alleging:

1. "Ineffective assistance of trial counsel"
  - a. "During the proceedings attorney was suffering from hearing impairment and unable to adequately follow the proceedings."
  - b. "Conflict of interest."
    - i. "My attorney represented one of the witnesses against me who got a reduced sentence for testifying."
    - ii. "If a witness agreement was reached, it should have been disclosed to the jury."
  - c. "My attorney failed to obtain necessary expert testimony."
    - i. "Also an expert will need to be obtained and presented at the PCR hearing with regards to this issue."
  - d. "My attorney failed to object to improper jury charge, improper closing comments, judicial remarks concerning my religion, and prejudicial hearsay testimony."
  - e. "My attorney failed to request a jury charge on accessory after the fact when the evidence warranted such a charge."
2. "Prosecutorial Misconduct."
  - a. "The prosecution failed to disclose facts, agreements, and evidence concerning the jailhouse witnesses motives for testifying."
3. "Ineffective assistance of Appellate Counsel."
  - a. "Appellate Counsel failed to raise and present direct appeal issues."
4. "Const. violations of the 6th and 14th Amendments of the U.S. Constitution."

Respondent made its Return on May 7, 2012. An evidentiary hearing into the matter was convened on April 4, 2013, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Franklin M. Mann, Jr., Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Honorable J. Mark Hayes II issued the order of dismissal denying Applicant's PCR application, filed on July 26, 2013.

Applicant timely filed a notice of appeal on August 30, 2013, which was perfected through filing a petition for writ of certiorari in the Supreme Court of South Carolina on behalf

FILED  
2022 JUL 27 PM 2:39  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY M. COX

of Applicant, by Lara M. Caudy, on February 7, 2014. Respondent made its return on April 25, 2014. On September 24, 2014, by written order the South Carolina Court of Appeals denied the petition. The remittitur was issued on October 10, 2014.

***Second PCR Action: (2018-CP-42-3180)***

Applicant filed his second PCR application on September 14, 2018. Respondent moved to summarily dismiss the application on August 20, 2020, for untimeliness, successiveness, and as barred by the doctrine of *res judicata*. The Honorable Grace Gilchrist Knie issued a conditional order of dismissal on September 15, 2020. The Honorable J. Derham Cole issued the final order of dismissal on August 30, 2021.

***First Habeas Corpus Action: (0:21-cv-019-DCC-PJG)***

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code Section 2254 on February 9, 2021. Applicant set forth the following grounds for relief:

1. “The petitioner’s after discovered evidence claim of subject matter jurisdiction that deprived the court of its power to adjudicate applicant’s case. The absence of an indictment is...jurisdictional.”

Respondent filed its return and motion for summary judgment on March 11, 2021. On June 4, 2021, Magistrate Judge Paige J. Gossett issued the report and recommendation that Respondent’s motion for summary judgment be granted and Applicant’s petition be dismissed as untimely. *Heydman v. Williams*, 0:21-19-DCC-PJG (D.S.C. filed June 4, 2021). Applicant’s objection to the report and recommendation was received on July 9, 2021. This matter remains pending.

**II. Current Action before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

FILED  
2022 JUL - 7 PM 2:39  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

1. Newly discovered evidence.
  - a. Trial Counsel was ineffective for failing to communicate a thirty year plea offer.

Before this Court are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, the current PCR application, and prior direct appeal, PCR, PCR Appeals, and habeas corpus records.

### III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application for failure to establish a *prima facie* case of newly discovered evidence.

Respondent contends that Applicant's claim of newly discovered evidence should 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.

FILED  
2022 JUL -7 PM 2:39  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

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

Applicant claims he has newly discovered evidence of a thirty year plea offer communicated to him, attaching a letter he received from Counsel, dated November 18, 2020, as substantiating evidence. Relevant portions of the letter read:

As best I can recall in your case the last plea offer we received and that was rejected by you was in exchange for a guilty plea to murder the State would offer you 30 years in prison. I recall you telling me that would be like a death sentence to you because of your age. We were trying to get them to let you plea to a Manslaughter charge, but that was rejected by the State.

Applicant's own evidence not only indicates he was aware of the offer made, but that he actively rejected it because it would effectively be a life sentence, given his age. Information Applicant knew about before trial is not newly discovered. Accordingly, this evidence was seemingly discovered prior to trial and Applicant's new contention that he did not know about the offer prior to November 2020 is of no consequence, especially since the only corroborating evidence he attached to the application indicates that he knew of the offer prior to trial, which is roughly a decade before this application was filed. Thus, Applicant has failed to make a *prima facie* case for why he is entitled to relief on this claim and, as such, this court should dismiss this claim for failure to make a *prima facie* case of Newly Discovered Evidence.

#### IV. Conclusion

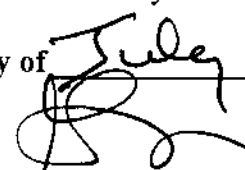
Pursuant to South Carolina Code Annotated Section 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this order upon him to show why this order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

FILED  
2022 JUL 7 PM 2:40  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY A. COX

Office of the Attorney General  
Attn: Chelsey F. Marto, Esquire  
PCR Division – Seventh Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 7<sup>th</sup> day of July, 2020

  
~~R. KEITH KELLY~~ Glenn G. Knie  
Seventh Circuit Court Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

FILED  
2022 JUL -7 PM 2:40  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX



Rec'd. m  
7/7/22  
[Signature]

ALAN WILSON  
ATTORNEY GENERAL

October 13, 2021

The Honorable R. Keith Kelly  
Seventh Circuit Court Judge  
125 East Floyd Baker Blvd.  
Gaffney, SC 29340

**Re: Robert Heydman, #330872 v. State of South Carolina**  
**2021-CP-42-01473**

Dear Judge Kelly:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned cases. If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Spartanburg County Clerk of Court to be filed and served. If you have any questions, please do not hesitate to contact me.

Sincerely,

Chelsey F. Marto  
Assistant Attorney General

CFM/ec  
Enclosure

cc: Robert Heydman, #330872

2022 JUL -7 PM 2:39  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FILED