

The State of South Carolina  
In The Supreme Court

Appeal From Cherokee County  
Court of Common Pleas

Honorable Grace Gilchrist Knice  
Case No. 2020-CP-11-0489

Jay Walter Tate, Jr. #131879  
Appellant.

vs

The State of South Carolina  
Respondents

Notice of Appeal

Please take notice, applicant above named files  
this Notice of Appeal from denial of PCR Application  
on the 16 day of August, 2022 and received by Applicant  
on day August, 2022, this notice follows. Date: 27  
day of September, 2022.

Respectfully Submitted  
*Jay Walter Tate, Jr.*  
Jay Walter Tate, Jr

RECEIVED

SEP 28 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

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

Jay Tate, #131879,  
Applicant,

) Case No.: 2020-CP-11-0489  
)  
)

v.

) **FINAL ORDER OF DISMISSAL**  
)  
)

State of South Carolina,  
Respondent.

)  
)  
)  
)  
)  
)

FILED IN THE OFFICE  
CLERK OF COURT  
2022 AUG 19 A 11:29  
BRANDY W. MOBBE  
CHEROKEE COUNTY, SC

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Jay Tate on July 15, 2020. Respondent moved to summarily dismiss the application on May 2, 2022, for failure to establish a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated June 1, 2022, provisionally summarily dismissing the application, but affording 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 June 23, 2022, as evidenced by the attached affidavit of personal service.

Applicant offered three responses to the return and motion to dismiss and conditional order of dismissal. First, on July 11, 2022, he filed a document entitled "Applicant Opposition to Summary Order of Dismissal." In this response, he stated that testimony at trial revealed the officers did not see Applicant and had no legal basis for entering the residence. He stated no exigent circumstances existed to enter because they were not in hot pursuit of him at the time. He stated that absent an exigent circumstance, a warrant was needed, and that this was not secured. He stated that failure to turn relevant documentation over constituted a *Brady* violation. He states that this was recently discovered by him and that he is entitled to a hearing because he

established a *prima facie* case of newly discovered evidence.

Also on July 11, 2022, Applicant filed a document entitled "Hearing Requested." In this document, he claims that he is entitled to a hearing because the issue raised now was not adequately addressed in his prior actions.

On July 15, 2022, Applicant sent a letter to the Cherokee Clerk of Court, requesting a document filed in his 1995 PCR matter entitled "memorandum motion upon the court to stay final court order pursuant to the Applicant PCR evidentiary hearing." In this document, he requested the court stay the final PCR evidentiary hearing decision because witness Richard Warder allegedly committed perjured testimony concerning the filing of an *Anders* brief. He also claimed his PCR attorney, the Honorable R. Keith Kelly, permitted this perjured testimony to come in at the PCR hearing without objection.

This Court has reviewed the responses in full and finds they are 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. Applicant merely reiterated his original argument in his responses; he did not change the Court's ultimate analysis. Specifically, the only corroborating evidence he attached to the application that supports this belief is a letter from the Cherokee County Sheriff, stating that they did not have a search warrant in their possession, but that they originated with the Magistrate's Office and that he should make the request of that office instead. That one institution does not possess documents originating within another institution does not mean that the search warrants do not exist at all. Further, even if one was not used, he has failed to show how this could not have been discovered through reasonable diligence, how he could not or did

not discover this until within a year of filing the PCR application, or how it was material to the case. Accordingly, this Court finds the application shall remain dismissed for failure to establish a *prima facie* case of newly discovered evidence.

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 responses, 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 failure to establish a *prima facie* case of newly discovered evidence. 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 16 day of August, 2022.



GRACE GILCHRIST KNIE<sup>1</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

<sup>1</sup> The Honorable R. Keith Kelly is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he represented Applicant in his first PCR action, the proposed final order of dismissal is being sent to the Honorable Grace Gilchrist Knie, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.

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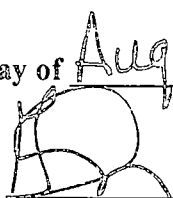
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S.C. SUPREME COURT



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 Mrs. Brandy W. McBee  
 Clerk of Court, Cherokee County  
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 Gaffney, S.C. 29342

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Jay Tate Jr. #131879  
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 Bishopville, SC 29010

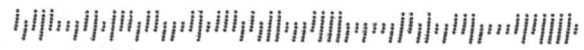
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