

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
)	
Genuine Truth Banner, #375165,)	Case No.: 2021-CP-42-00090
Applicant,)	
)	
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 Genuine Truth Banner on January 10, 2022. Respondent moved to summarily dismiss the application on March 11, 2022, because it is untimely, successive, and because claims against PCR Counsel are not cognizable under the PCR Act.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated July 28, 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 September 7, 2022, as evidenced by the attached affidavit of personal service.

Applicant has offered many responses to the return and conditional order of dismissal. On January 26, 2022, Applicant filed a document in which he indicated his intent to proceed forward *pro se* and added the allegation that “the State lacked subject matter jurisdiction to try the case or accept an ‘as indicted’ plea where no indictments existed at the time of the plea.”

On March 21, 2022, Applicant filed a “reply to conditional order of dismissal.” In this response, Applicant stated he discovered that no indictments existed on May 4, 2021, when he received the clerk’s records for the first time. He claims that the indictments that exist are

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forgeries. He stated that he received evidence from the FBI on June 12, 2021, that one of the indictments was issued late. He also stated that the Solicitor said that his blood type was in evidence, but that no blood sample was taken. He also claimed that he raised a claim *pro se* in his initial PCR action that was never raised and ruled upon by the PCR Court. He stated this claim related to the trial judge's "unconstitutional statement and actions." He stated this constitutes newly discovered evidence and that he is entitled to a new evidentiary hearing as a result.

On June 30, 2022, Applicant filed a document entitled "request for an update." In this response, Applicant requested an update on his reply to the proposed conditional order of dismissal, clocked March 21, 2022. Applicant also corrected the docket number used in prior filings.

On September 6, 2022, Applicant filed a document entitled "motion to amend application." In this response, Applicant offered the following allegations:

1. "Brady violation by Solicitor Barry Barnette where no indictments never existed pursuant to SCRCF Rule 3, sections (c) and (e) yet Barnette failed to disclose that and openly claimed otherwise during pre-trial motions/hearings."
2. "The plea is invalid where it could not have been knowingly, willingly, or intelligently entered as it was an 'as indicted' plea although records show that no indictments existed pursuant to SCRCF Rule 3, sections (c) and (e)."
3. "14th amendment due process violation where the court accepted an 'as indicted' plea although they knew or should have known that no indictment existed pursuant to SCRCF, Rule 3, sections (c) and (e)."

On September 13, 2022, Applicant filed "Applicant's reply to the conditional order of dismissal." In this response, Applicant again made clear that he was alleging that the convictions were unconstitutional because he was not properly indicted and, because he was not properly indicted, the Court lacked subject matter jurisdiction. He also reiterated that the Solicitor stated that they found blood evidence connecting him to the crime, even though no blood sample was

taken. He stated that the original PCR Court did not adequately rule upon the Fourteenth Amendment allegation raised in the initial PCR action. He also claimed that the indictments attached to his case were forged.

On September 19, 2022, Applicant filed a document entitled “exhibits/documentation supplemented to Applicant’s reply to the conditional order of dismissal.” Applicant enclosed roughly fifteen exhibits, including clerk’s records, transcript portions, prior PCR action records, the indictments, and NCIC reports.

This Court has reviewed all responses in full and finds none are sufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant’s assertion that he is being held in custody unlawfully because of newly discovered evidence, such that he should be entitled to vacation of his sentence and immunity, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief 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 material fact not previously presented, the post-conviction relief 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).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea

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must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant alleges in support of his claim of newly discovered evidence that his indictments are fabricated, and that Applicant’s blood was matched to the evidence even when no blood sample was taken. Both pieces of evidence could have been discovered before the plea and defense arguments concerning these pieces of evidence were waived when entering the plea. Applicant has failed to show how these discoveries warrant vacation of the plea.

Before the 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); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Applicant’s claim he is entitled to relief on grounds that his prior PCR counsel was ineffective is still not cognizable in a PCR action. Applicant received a hearing in his first PCR action and is currently enjoying his appeal therefrom. It is clear Applicant enjoyed, and is still currently enjoying on appeal, his “one full bite at the apple.” Therefore, Applicant’s allegations of ineffective assistance of PCR counsel do not fall within any exception to the rule barring such

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claims, and the allegations shall remain dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

Additionally, this Court finds that the application is barred for untimeliness. Applicant pled guilty to all charges on January 23, 2018, and the remittitur from his direct appeal was issued on May 14, 2018. The application was therefore due on May 15, 2019. This application was filed on January 10, 2022, 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* 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 because it is untimely, successive, for failure to establish a *prima facie* case of newly discovered evidence, and because claims against PCR Counsel are not cognizable under the PCR Act. 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



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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 2 day of November, 2022.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

, South Carolina

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MAY 14, 2017



ALAN WILSON
ATTORNEY GENERAL

October 5, 2022

The Honorable R. Keith Kelly
Chief Administrative Judge
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: Genuine Truth Banner, #375165 v. State of South Carolina
2021-CP-42-00090

Dear Judge Kelly:

Enclosed please find the proposed final order of dismissal in the above-captioned case. Attached to the proposed order is the conditional order of dismissal, Applicant's responses to the conditional order, and the affidavit serving the conditional order on Applicant. If this proposed order meets your approval, please sign and forward to the Spartanburg County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/jbh
Enclosure(s)

cc: Genuine Truth Banner, #375165

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AMY M. COLE