

STATE OF SOUTH CAROLINA)
 COUNTY OF DILLON)
)
)
 Isaiah Brown, #347241,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE FOURTH JUDICIAL CIRCUIT
 FILED
 CHESTERFIELD COUNTY
 Case No.: 2018-CP-17-00465 2022 OCT 24 P 2:09
 ORDER DENYING APPLICANT'S
 MOTION FOR RECONSIDERATION

Applicant filed his post-conviction relief application on October 15, 2018. Respondent made a return and motion to dismiss the application for failure to establish a *prima facie* case of newly discovered evidence, successiveness, and untimeliness. On December 19, 2018, the Honorable Paul M. Burch, circuit court judge, executed a conditional order of dismissal. Applicant offered responses to the conditional order of dismissal on January 16, 2019, and February 28, 2019. On July 19, 2019, Judge Burch executed the final order of dismissal. Applicant, through Counsel Thurmond Brooker, filed a “Rule 59(e) motion to alter or amend judgment” on August 6, 2019. The State offered a return to the 59(e) on August 24, 2022. A hearing on the motion was held on September 1, 2022, at the Chesterfield County Courthouse. Applicant was present at the hearing and represented by Thurmond Brooker, Esquire. Respondent was represented by Chelsey F. Marto, Esquire, of the South Carolina Attorney General’s Office. At the hearing, Applicant focused on his newly discovered evidence allegation, claiming that this entitled him to another evidentiary hearing. After reviewing all records and evidence before this Court, this Court denies Applicant’s motion to alter or amend the judgement pursuant to Rule 59(e), SCRPC. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted at the June 2010 term of the Dillon County Grand Jury for murder (2010-GS-17-00494). Applicant was additionally indicted at the August 2010 term for criminal conspiracy (2010-GS-17-00616), possession of a weapon during the commission of a violent crime (2010-GS-17-00617), and armed robbery (2010-GS-17-00618). William E. Grove, Esquire, represented Applicant, and W. Shipp Daniel, III, Esquire, of the Fourth Circuit Solicitor's Office, prosecuted the case. On August 8, 2011, Applicant pled guilty as indicted. The Honorable Howard P. King, circuit court judge, sentenced Applicant to imprisonment for concurrent terms of forty-five years for murder, thirty years for armed robbery, and five years for both the criminal conspiracy and the weapons charge.

Applicant thereafter filed a timely motion to withdraw the guilty plea. A hearing on the motion was convened before Judge King on March 7, 2012. Applicant was represented again by Mr. Grove and the State was again represented by Mr. Daniel. At that time, Applicant orally moved to reconsider the sentence.¹ At the conclusion of the hearing, Judge King denied both motions from the bench.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Robert M. Dudek, Esquire, filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Brown*, Op. No. 2014- UP-096. The remittitur was issued on March 21, 2014.

¹ The court noted the oral motion was not timely made, but was treated as timely made by the court, and Counsel was provided a full opportunity to present arguments in support.

First PCR Application: 2014-CP-17-00414

Applicant filed his first application for post-conviction relief on September 10, 2014. He alleged the following grounds for relief in his application:

1. "Denial of Effective Assistance of Counsel"
 - a. "Failure to Investigate;"
 - b. "Failure to properly [sic]"
2. "Involuntary Guilty Plea"
 - a. "Counsel's ineffectiveness resulted in Plea"

Respondent made its return on November 21, 2014. Applicant, by and through PCR counsel Lance S. Boozer, Esquire, amended his application by filing on January 6, 2016, alleging:

1. Ineffective assistance of counsel, in that:
 - a. "Counsel failed to investigate co-defendant, Mikal Bethea."
 - b. "Counsel failed to prepare for trial."
 - c. "Counsel failed to investigate, review and/or discuss trial strategy, defenses and evidence with Applicant."
 - d. "Counsel was not present during a meeting involving the Solicitor's office and Applicant."
 - e. "Counsel failed to properly advise Applicant of possible sentencing range for the charges."
 - f. "Counsel failed to challenge statements made by Applicant while he was interviewed at the age of 16 without being able to consult with his parent."
 - g. "Counsel failed to bring to the Court's attention Applicant had a pending Motion to Relieve Counsel. The Motion was never heard or ruled upon."
 - h. "Counsel failed to properly prepare for Reconsideration hearing."
2. Prosecutorial misconduct, for:
 - a. "... attempting to interview Applicant in the absence of counsel."
3. "Ineffective assistance of appellate counsel."
4. "Involuntary guilty plea."

An evidentiary hearing into the matter was convened on January 12, 2016, before the Honorable Roger E. Henderson, circuit court judge. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Jessica Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf; co-

defendant Mikal Bethea and plea counsel Grove also testified. By written order dated January 25, 2016, and filed January 27, 2016, Judge Henderson granted relief, finding Counsel was ineffective in failing to interview Bethea.

The State timely filed a motion to alter or amend the order granting PCR. By written order dated June 1, 2016, and filed June 13, 2016, Judge Henderson granted the motion to alter or amend, and amended the prior order to deny post-conviction relief.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Kathrine H. Hudgins, Esquire, on Applicant's behalf, who raised the following issues:

1. Was the guilty plea to murder rendered involuntary by trial counsel's failure to attempt to interview co-defendant, Mikal Bethea, who confirmed at the PCR hearing that he was the triggerman?
2. Was the plea counsel ineffective in failing to call co-defendant, Mikel Bethea, as a witness at the motion to consider sentence to confirm that Bethea was the triggerman but was allowed to plead to voluntary manslaughter for a fifteen years sentence when Petitioner, who was not the triggerman, pled guilty to murder and received a forty-five (45) year sentence?

Respondent filed its return on July 5, 2017. By order dated October 30, 2017, the Supreme Court of South Carolina transferred the matter to the South Carolina Court of Appeals pursuant to Rule 243(1), SCACR. On March 27, 2018, the Court of Appeals denied the petition by unpublished order. The remittitur was issued on April 12, 2018.

Federal Habeas Petition: 0:10-1365-DCN-SVH

Applicant subsequently filed a *pro se* petition for habeas corpus under 28 U.S.C. § 2254 on May 15, 2018 (C.A. No. 0:10-1365-DCN-SVH). In his petition, Applicant set forth the following grounds for relief (verbatim):

Brady Motion Violation on solicitor for using inadmissible frivolous allege claims of James Alford and Phillip J. Williams at my guilty plea. Guilty plea transcript page (19, 20) Lines (18 – 25, 1 – 24). This allegation should have been “exclude from evidence” by the solicitor cause it was hearsay. I never been around those 2

inmates Period. I never seen they claims inside my Brady Motion that been file. This allege claims violate my Due Process of law/rights as a human being also denies me of a fair disposition.

Respondent filed its return and motion for summary judgment on August 24, 2018. A report and recommendation advising summary dismissal was signed by the Honorable Shiva V. Hodges. An order adopting the report and summarily dismissing the petition with prejudice was filed on January 16, 2019.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit. The appeal was dismissed by unpublished opinion, filed on June 24, 2019. The judgement was filed on June 24, 2019. The mandate was filed on July 16, 2019.

Current Action Before this Court

Applicant filed his second and current PCR application on October 15, 2018, alleging:

1. “After discovered evidence per 17-27-45(c) of prosecutorial misconduct [*Berger v. United States*, 295 U.S. 78 (1935)] to induce involuntary plea. [*Hill v. Lockhart*, 474 U.S. 52 (1985).]”
 - a. “Solicitor failed to disclose, prior to trial, (or at anytime thereafter) that two federal snitches statements that led to his guilty plea were known to be false as these two adults, Alford and Williams, who stated Applicant confessed to actually pulling me the trigger in the case, and both of these letters gave exquisite detail, this would have came out at trial R.O.A. 19 had never been housed at same facility with juvenile applicant who was at DJJ”
 - b. “The Failure to disclose this material fact favorable to accused in violation [of *Brady v. Maryland*, 373 U.S. 83 (1963)] rendered plea involuntary [*Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999); *Roberts v. State*, 361 S.C. 1, 602 S.E.2d 768 (2004)] prior to the date of trial surprise representation of solicitor Applicant had sought jury trial “but for” failure to disclose He would have went to trial. These witnesses not on state witness list.”
 - c. “Solicitor knowing presented false statements (above) to support of state case at guilty plea and said statements used to induce Guilty Plea.

[*Banks v. Dretke*, 540 U.S. 668 (2004);² *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006)].”

Before this Court are the Dillon County Clerk of Court records, Applicant’s South Carolina Department of Corrections records, the PCR application, and prior PCR, PCR appeals, and habeas records.

Analysis

After careful consideration of the arguments of Counsel and review of the record, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. The order of dismissal issued by this Court contains the appropriate findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws and Rule 52(a) of the South Carolina Rules of Civil procedure. Specifically, this Court finds that this Court has reached the appropriate findings of fact and conclusions of law concerning Applicant’s failure to establish a *prima facie* case of newly discovered evidence.

This Court finds that Applicant’s assertion that he is being held in custody unlawfully because of newly discovered evidence that entitles him to relief, is without merit. The Uniform Post-Conviction Relief Act states that 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 material fact not previously presented, 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

² This citation required considerable modification from the citation provided by Applicant, but Respondent believes it is the case to which he intended to refer.

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 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 has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant’s allegations involve “facts” that were, or could have been, discovered before his plea. Indeed, the central element of Applicant’s complaint was brought to his attention during the plea proceeding:

Also, throughout the course of the investigation, I actually received two letters from inmates at the jail, one letter per inmate. And these letters said that Isiah Brown confessed to actually pulling the trigger in the case. And both of these letters gave exquisite detail, and this is stuff that had I chosen to call them, this would have come out at trial.

They have very detailed information as to the crime, where it happened, what color the car was. They actually said that Isaiah told them that he had wiped the gun down for prints with a green bandanna, wrapped the gun in that green bandanna. He said that he put the bullets – the left-over bullets – in a stocking cap and wrapped those up, and they were in the attic of the house.

Well, law enforcement took that information, got a search warrant for the house, found the gun in the attic wrapped in a green bandanna, just like we were told it

was going to be. And the bullets were wrapped in a stocking cap, just like we were told it was going to be.

(Appx. 19-20). Applicant offered no objection at the plea hearing to this statement of facts. Thus, Applicant was seemingly aware of the statements no later than at his August 2011 plea hearing. Additionally, because he was aware of the statements, he would have had the opportunity to seek defenses available to him based upon any inaccuracies at that time. Specifically, he would have known whether he told a fellow inmate about the gun at the time of the plea. Applicant's claim that the statements could not have possibly been accurate are incredible because these statements were relied upon to locate the murder weapon hidden in his grandmother's attic, wrapped in a green bandanna.

His claim that the statements were not turned over to the defense in discovery is similarly incredible, as the discovery of the weapon in the attic, in addition to his own incriminating statements, was central to the State's case against him. Indeed, Applicant testified under cross-examination at his January 12, 2016, PCR hearing:

Q. He reviewed all the evidence with you?

A. Like the statements but not the, like, dealing with my co-defendant's and stuff.

Q. As far as what? What did you mean - - -

A. Like question them and stuff like that. But like the statements and stuff, he viewed that with me.

(Appx. 116-17). Applicant does not indicate how he "discovered" the identities where their names do not appear in his filings or transcripts until his federal habeas petition. Applicant also does not present evidence that the purported identities are the actual identities of the individuals who offered the statements. Further, this Court finds Applicant's assertion that he discovered this evidence within a year of filing the application incredible, given the above. Any

issue of material fact allegedly presented is fabricated and non-consequential, given the record and circumstances. This Court refuses to rely upon Applicant's blanket, unsubstantiated assertion that he has newly discovered evidence in finding a *prima facie* case has been reported when the record readily refutes much of what Applicant has offered. Greater substantiation of an otherwise passable claim is needed for this Court to convene an evidentiary hearing and Applicant has not met that burden. For all these reasons, Applicant has not established that he discovered the issues offered within the year prior to his filing, has not shown that the information was not otherwise available to him by the exercise of reasonable diligence at or before the time of his plea, and has not shown that the alleged "discovery" is of such weight and quality that the "interests of justice" require further action.


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.

IT IS THEREFORE ORDERED that Applicant's motion is hereby **DENIED AND DISMISSED**.

AND IT IS SO ORDERED this 14th day of October, 2022.



Paul M. Burch
Circuit Court Judge
Fourth Judicial Circuit

, South Carolina

Campbell Douglas
Law Clerk to The Honorable Paul M. Burch
PO Box 276
Pageland, SC 29728

Attn. Chelsey Marto
The Honorable Alan Wilson
P.O. Box 11549
Columbia, S.C. 29211

FILED
STUART HYATT

2022 OCT 24 P 2:09

CLERK OF COURT
COLUMBIA COUNTY

RE: BROWN Isaiah – 59(e) Order

Ms. Marto:

Judge Burch has signed the order DENYING Defendant's 59(e) motion. Enclosed is the signed order DENYING Defendant's 59(e) motion. Please file the signed order and forward a certified copy to Mr. Brooker. Please let me know if there is anything further we can do to help.

Thanks,



Campbell Douglas
Law Clerk to The Honorable Paul M. Burch



FILED
GWEN T. HYATT

2022 OCT 24 P 2:09

DILLON COUNTY COURT
DILLON, SOUTH CAROLINA

ALAN WILSON
ATTORNEY GENERAL

October 20, 2022

The Honorable Gwen T. Hyatt
Dillon County Clerk of Court
301 W Main St
PO Drawer 1220
Dillon, SC, 29536

Re: Isaiah Brown #347241 v. State of South Carolina
2018-CP-17-00465

Dear Ms. Hyatt:

Enclosed please find the original Order Denying Applicant's Motion for Reconsideration signed by the Honorable Paul M. Burch, in the above-captioned case, for filing in your office. In addition, please forward a time stamped copy back to our office for our file.

Sincerely,

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

CFM/jbh

cc: