

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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Clifton Newman, Circuit Court Judge

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Case No. 2019-CP-02-3131

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**RECEIVED**

**Jan 19 2023**

S.C. SUPREME COURT

Eric L. Spann ..... Appellant,

v.

State of South Carolina ..... Respondent.

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**NOTICE OF APPEAL**

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Eric L. Spann appeals the Order of the Honorable Clifton Newman dated August 19, 2022, and filed in the Aiken County Clerk's office on August 23, 2022. The Order was served on Appellant by Certificate of Service dated January 4, 2023. Appellant actually received written notice of this Order on January 9, 2023.

January 18<sup>th</sup>, 2023.

*/s/ P. Andrew Anderson* \_\_\_\_\_

P. Andrew Anderson  
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Attorney for Appellant

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

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

Eric L. Spann, #245840, )  
Applicant, )

Case No.: 2019-CP-02-3131

v. )

ORDER DENYING MOTION TO )  
RECONSIDER DISMISSAL )  
OF SUCCESSIVE PCR ACTION )

State of South Carolina, )  
Respondent. )

FILED

12:58  
8-23 2022

*Robert J. Burti*  
C.C.P. & G.S.  
*Shadell Parks*  
Deputy Clerk

This matter is before the Court based on a successive, sixth application for post-conviction relief filed by Applicant Eric L. Spann. In response, Respondent the State of South Carolina made its return and moved to summarily dismiss the action as procedurally barred on numerous grounds pursuant to the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014).

After a review of the record and pleadings, this Court agreed this application should be summarily dismissed and provisionally dismissed the action by way of a Conditional Order of Dismissal filed on December 20, 2021, giving the Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated January 5, 2022, serving the above-mentioned Conditional Order of Dismissal on Applicant, though his counsel.<sup>1</sup>

In response to this conditional dismissal, Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal," that was filed on January 25, 2022. In this document, Applicant argues that his sixth application should not be summarily dismissed because challenges to subject matter jurisdiction can be raised at any time and should not be

<sup>1</sup> Applicant filed this action pro se but counsel P. Andrew Anderson later assumed representation and filed the response to the conditional order of dismissal on Applicant's behalf.

procedurally barred as successive. In support of this argument, Applicant relied upon S.C. Code Ann. § 22-5-320 and asserts the plea court was without subject matter jurisdiction to accept his plea based on a lack of preliminary hearing.

Thereafter, this Court issued a final order of dismissal, finding that Applicant failed to recognize that the South Carolina Supreme Court declared Section 22-5-320 unconstitutional forty years earlier in State v. Keenan, 278 S.C. 362, 366-67, 296 S.E.2d 676, 678-79 (1982) (holding Section 22-5-320 of the South Carolina Code, which provided a defendant the right to a preliminary hearing if demanded before an indictment, unconstitutional). Rule 2(b), SCRCrimP, unambiguously states, ““If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. *The hearing shall not be held, however, if the defendant is indicted by a grand jury* or waives indictment before the preliminary hearing is held.”

This Court also found Applicant’s claims that the Aiken County Court of General Sessions was without subject matter jurisdiction to accept his plea based on a lack of a preliminary hearing fails as a matter of law, as courts of general sessions obviously have jurisdiction to dispose of criminal matters by way of jury trial or plea. See State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (“The court of general sessions has subject matter jurisdiction to try criminal cases.”); State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (“[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.”); id. at 101, 610 S.E.2d at 499 (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

This Court found that Applicant was properly indicted by the Aiken County Grand Jury and pled guilty in the Aiken County Court of General Sessions. The plea court had jurisdiction to

accept his guilty pleas and impose a sentence. This Court found that his claims failed as a matter of law and dismissed his application for post-conviction relief with prejudice.

Applicant, though counsel, then filed a motion to reconsider. In this motion, Applicant acknowledges that Keenan held that § 22-5-320 is unconstitutional, but nevertheless argues that it somehow controls and should result in the grant of relief because the statute “remains on the books.” This Court finds this argument to patently lack merit.

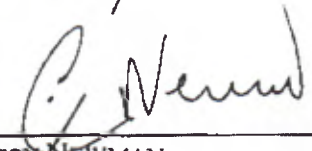
Applicant further asserts that he timely requested a preliminary hearing and was denied such a hearing, so he therefore suffered prejudice and is entitled to a hearing and ultimately relief. However, this Court finds this claim to be without merit, as it is clear from the record that Applicant was properly indicted and then pled guilty to the indicted offense.

**IT IS THEREFORE ORDERED** that this motion to reconsider is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant 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 19<sup>th</sup> day of August, 2022.

Columb, 2, South Carolina

  
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CLIFTON NEWMAN  
Presiding Judge  
Second Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
IN THE COURT OF COMMON PLEAS

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ERIC LAMONT SPANN, #245840

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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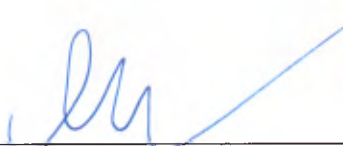
**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the Filed Order Denying Motion to Reconsider Dismissal of Successive PCR Action has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Mr. Paul Andrew Anderson, Esquire  
Anderson & Anderson, LLP  
211 York Street, North East, Suite 2  
Aiken, South Carolina 29801

This 4<sup>th</sup> day of January, 2023.



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Joshua Osborne  
Legal Assistant for Respondent