

DEAR MR. SHEARONK,

JUNE 11, 2013

PLEASE FIND ENCLOSED WITH THIS LETTER A COPY OF MY NOTICE OF APPEAL FOR FILING WITH YOUR OFFICE. ALSO INCLUDED IS A COPY OF THE CONDITIONAL ORDER OF DISMISSAL AND A COPY OF THE FINAL ORDER OF DISMISSAL IN CASE NUMBER 12-CP-22-1167 FOR YOUR OFFICE.

I AM ALSO INCLUDING AN EXTRA COPY OF THE COVER SHEET OF MY NOTICE OF APPEAL AND A SASE FOR YOUR CONVENIENCE. WILL YOU PLEASE CLIP STAMP THE EXTRA COVER SHEET AND RETURN IT TO ME FOR MY RECORDS.

THANK YOU,

*Gayle Weger*

**RECEIVED**

JUN 14 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

JUN 14 2013

APPEAL TO GEORGETOWN COUNTY S.C. Supreme Court

CASE No.: 2012-CP-22-1167

BENJAMIN H. CULBERTSON, PRESIDING JUDGE

GARY LEROY HAYES, ..... PETITIONER,

v.

STATE OF SOUTH CAROLINA, ..... RESPONDENT.

NOTICE OF APPEAL

STATE'S ATTORNEY:

Tyson A. JOHNSON, SR.  
ASSISTANT ATTORNEY GENERAL  
P.O. Box 11549  
COLUMBIA, S.C. 29211

PETITIONER, PRO SE:

GARY L. HAYES #263985  
MANNING CI W9  
502 BECKMAN DR.  
COLUMBIA, S.C. 29203

502 Beckman Dr.  
Columbia, S.C. 29203

RECEIVED

CERTIFICATE OF SERVICE

JUN 14 2013

S.C. Supreme Court

I, Gary L. Hayes hereby certify that on this date I served a true and correct copy of the foregoing document(s) on the below listed individual(s) by placing the same in the U.S. mail postage prepaid and sent to their last known address as follows:

Hon. Daniel Shearouse,  
Clerk of Court  
S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Hon. Alma White  
Clerk of Court  
Georgetown County  
P.O. Box 479  
Georgetown, S.C. 29442

Tyson A. Johnson, Jr  
Asst. Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Gary L. Hayes  
Gary L. Hayes  
Manning Ct W9  
502 Beckman Dr.  
Columbia, S.C. 29203

SWORN to and subscribed before me

this 11<sup>th</sup> day of June, 2013

Elizabeth Woodard  
Notary Public

My commission expires: My Commission Expires May 30, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS

12-CP-22-1167

Gary Leroy Hayes, 263985 )  
Applicant, )

v. )

State of South Carolina, )  
Respondent. )

**CONDITIONAL  
ORDER OF DISMISSAL**

FILED  
GEORGETOWN COUNTY CLERK OF COURT  
2013 FEB 20 AM 11:26  
ALLINA Y. WOOD

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 26, 2012. Respondent made its Return on December 19, 2012, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the October 1998 term of the Georgetown County Grand Jury for Murder (98-GS-22-839). He was represented by David Hood, Esquire. On January 24-28, 2000, the Applicant proceeded to trial after which he was found guilty of Voluntary Manslaughter. He was sentenced by the Honorable Howard P. King to confinement for a period of fifteen (15) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hayes, Op. No. 2001-UP-415 (S.C. Ct. App. filed September 27, 2001).

*1*  
*WKC*

Respondent filed his first PCR July 23, 2002. On June 15, 2004 the PCR trial court denied PCR and dismissed the Application. Applicant filed a pro se Petition for Writ of Certiorari and the court denied Certiorari. The remittitur was sent June 7, 2006.

Applicant was released on Community Supervision on or about October 1, 2010. On May 20, 2011 a community supervision arrest warrant was issued for violations of the community supervision order. Applicant's warrant was served on June 29, 2012. On August 30, 2012, Applicant's community supervision was revoked and he was remanded to the Department of Corrections for one year.

#### ALLEGATIONS

Applicant alleges in a two page handwritten amendment that he is being held in custody unlawfully as he claims he "should be discharged and released from incarceration on or before January 1, 2013." Respondent asserts Applicant's sentence has not expired.

#### DISCUSSION

This Court finds that the Application should be dismissed as Applicant has failed to make out a case of sentence expiration.

#### Applicant Absconded and received a revocation

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). Applicant was released on Community Supervision on or about October 1, 2010. On May 20, 2011 a community supervision arrest warrant was issued for violations of the community supervision order. (warrant number W-22-11-0041). The supporting information in the warrant included, "failure to follow advice and instructions of Agent. Failure to report as instructed by Agent. Offender was given verbal instructions to report

to the Georgetown county Probation office on 5-18-11. He failed to report as instructed." The information also detailed a criminal domestic violence charge and failure to pay supervision fees (3 payments) and failure to pay EM fees (13 payments).

It appears that 406 days were added to Applicant's sentence because he absconded supervision. Applicant's warrant was issued on May 20, 2011 and served on June 29, 2012. (406 days). On August 30, 2012, Applicant's community supervision was revoked and he was remanded to the Department of Corrections for one year. Applicant is still serving time on his CSP sentence. After serving his one year CSP revocation, DPPS indicates Applicant may be released on CSP again with a new ending date of 3-1-14.

The current allegations that Applicant's sentence has expired are not supported by the record. Applicant has failed to establish sufficient justification for post-conviction relief; accordingly, this Court finds the Application should be summarily dismissed.

#### CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

**AND IT IS SO ORDERED** this

5<sup>th</sup> day of Feb., 2013.

Georgetown, South Carolina.

Benjamin Culbertson

Honorable Benjamin Culbertson  
Chief Administrative Judge  
15<sup>th</sup> Circuit

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AJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Katherine Dove (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF ) **AFFIDAVIT OF PERSONAL SERVICE**

On this 14<sup>th</sup> day of March, 2013, I served the signed **Conditional Order of Dismissal** on *Inmate Gary Leroy Hayes No. 263985*, by delivering personally and leaving a copy of the same at **Walden Correctional Institution**, Columbia, South Carolina. Deponent is not a party to this action.

s/ Katherine Dove  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

this 14<sup>th</sup> day of March, 2013  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires 11 May 2015

**ADMISSION OF SERVICE**

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, **Walden Correctional Institution**, Columbia, Richland County, South Carolina, this 14<sup>th</sup> day of March, 2013.

s/ Gary L. Hayes  
Inmate Signature  
SCDC No. 263985

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 Gary Leroy Hayes, 263985 )  
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 )  
 Applicant, )  
 )  
 )  
 VS. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 C.A. NO. 12-CP-22-1167

FILED  
 GEORGETOWN COUNTY, S.C.  
 JUN - 3 PM 12: 26  
 ALMA Y. WHITE  
 CLERK OF COURT

**FINAL ORDER  
 OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 26, 2012. Respondent (the State) made timely Return and Motion to Dismiss, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed February 20, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Personnel in the South Carolina Department of Corrections caused the Conditional Order of Dismissal to be served upon Applicant on or after March 14, 2013. Applicant sent a response thereto objecting to summary dismissal.

**Applicant's response**

In a document captioned "Reply Brief and Motion for Summary Judgment" Applicant objects to summary dismissal of his action. Among his arguments, Applicant alleges "...therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of

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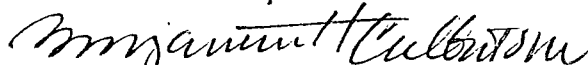
Probation, Parole and Pardon Services' community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term for the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence."

Applicant fails to address that portion of the Conditional Order of Dismissal which details his failure to report to the Georgetown County Probation office on May 18, 2011, failure to pay supervision fees, or failure to pay EM fees. On March 27, 2013, Applicant filed a pro-se document styled as a "INITIAL BRIEF ON APPEAL" which purports to be filed with the South Carolina Supreme Court, where he discusses the history of his release on the Community Supervision Program October 1, 2010 and his subsequent re-arrest and sentencing on August 30, 2012. He fails again to account for his decision to abscond, and failure to report to the Georgetown County Probation office on May 18, 2011. Applicant fails to provide facts or law which would permit him to abscond for 406 days and not have to account for that portion of his sentence.

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient factual or legal reason has not been shown as to why the Conditional Order of Dismissal should not become final. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become the final Order of the Court.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 21<sup>st</sup> day of May, 2013.

  
Honorable Benjamin Culbertson

Chief Administrative Judge  
15th Judicial Circuit

Georgetown, South Carolina.

3/mhc

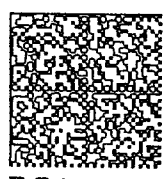
GARY L. HAYES #263985  
MANASSAS CT 079  
502 BECKMAN DR.  
COLUMBIA, S.C. 29103

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MCJ MAIL ROOM

HONORABLE DANIEL STEPHENS  
CLERK, SOUTH CAROLINA SUPREME COURT  
P.O. BOX 11330  
COLUMBIA, S.C. 29211



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