

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Rodney Galimore, SCDC #332336, Case No.: 2021-CP-07-00139

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Rodney Galimore on January 26, 2021. In response, Respondent, the State of South Carolina, made its return and moved to dismiss the application as untimely and successive pursuant to S.C. Code Ann. §17-27-20, §17-27-45, and §17-27-90.

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 signed July 14, 2021, and filed July 19, 2021, provisionally denying and dismissing this action, while giving 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 an Affidavit of Service dated August 2, 2021, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On August 16, 2021, Applicant filed a response entitled "Return to the Order of Dismissal". In this document, Applicant reiterates the allegations made in the instant post-conviction relief application and further argues there is newly discovered evidence that "did not previously exist due to the failure of the court and or the attorney's involved". Specifically, Applicant alleges the original post-conviction relief court did not depose an officer involved in the underlying case. Applicant claims the original PCR court's decision not to depose the officer was not discovered

until he filed a petition for writ of certiorari following the denial of his first post-conviction relief action and therefore constitutes newly-discovered evidence. Applicant alleges that because the officer was not deposed, the officer was not able “to explain why the statute of implied consent was not followed”. Applicant posits the officer could have been questioned regarding whether he had “evidence,” as well as questioned why “the statute was not observed”. Applicant further asserts all issues raised in his initial post-conviction relief action were not specifically addressed by the initial post-conviction relief court¹. Thus, Applicant requests this application be “sent back to the PCR court”.

This Court finds Applicant has failed to show why his application should be considered timely pursuant to S.C. Code Ann. §17-27-45. The Uniform Post-Conviction Procedure Act provides, “[a]n application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.” S.C. Code Ann. §17-27-45(a). The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2003). In the present case, Applicant was sentenced on December 10, 2008, and the remittitur from his subsequent direct appeal was issued November 14, 2013. The current application was not filed until January 26, 2021 – more than six years after the statute of limitations. Therefore, this application is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(A). Moreover, Applicant has not alleged any

¹ This Court further notes Applicant attached a two-page amendment from his initial post-conviction relief action (2013-CP-07-03163), filed January 24, 2014, to his response to the Conditional Order of Dismissal.

claims based on a change of law or statute. Therefore, Applicant has failed to comply with the filing requirements under Section 17-27-45(B) as well.

This Court further finds Applicant has failed to make a *prima facie* case of newly-discovered evidence. See S.C. Code Ann. § 17-27-45(C) (“If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.”) An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)). This Court finds the newly-discovered evidence Applicant asserts entitles him to a successive evidentiary hearing is deposition testimony Applicant *believes* the initial PCR court *should have* obtained prior to denying his post-conviction relief action, but did not². As such, Applicant has failed to make a *prima facie* case of newly-discovered evidence and this application is procedurally barred. S.C. Code Ann. § 17-27-45(C).

² To the extent Applicant’s response can be interpreted as a claim of ineffective assistance of PCR counsel, this Court dismisses the allegation because ineffective assistance of PCR counsel is not a cognizable claim for proceeding with the merits of a successive application. The “contention that prior PCR counsel was ineffective is not *per se* a “sufficient reason” warranting a successive PCR application. . . .” *Aice v. State*, 305 S.C. 451, 409 S.E.2d 394 (1991). This Court finds that Applicant has failed to supply a sufficient reason that this application should not be dismissed summarily as it fails to make a *prima facie* case of newly-discovered evidence, was filed beyond the statute of limitations and is impermissibly successive.

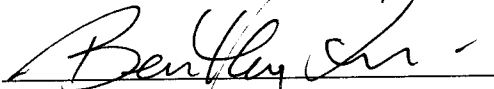
This Court also finds this application is barred on successiveness grounds. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, the instant application is also barred as successive.

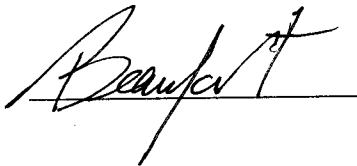
This Court has reviewed Applicant's response to this Court's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. The Court reasserts its findings in the Conditional Order of Dismissal that the current PCR application must be dismissed as untimely and successive as Applicant has not set forth sufficient reason to excuse his non-compliance with the statute of limitations, because Applicant has failed to make a *prima facie* case of newly-discovered evidence, and because this application is successive to Applicant's previous PCR application. Therefore, this Court summarily dismisses this application for post-conviction relief.

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.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal and herein, this application for post-conviction relief is hereby **DENIED** and **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED this 11 day of February, ²⁰²²~~2021~~


BENTLEY PRICE
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP0700139**

Rodney Galimore		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: Application Denied
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: **See attached order** Statement of Judgment by the Court:
ORDER INFORMATION

Final Order of Dismissal

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ B. Price

2766

2/11/2022

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **March 7, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **March 7, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Galimore #332336 Tyger River Corr.
Inst.-U-7-111B 200 Prison Road Enoree, SC 29335

Samantha Jo Weidauer PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

MK

Court Reporter

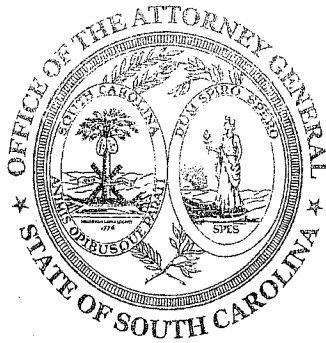
Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ALAN WILSON
ATTORNEY GENERAL

March 3, 2022

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Post Office Box 1128
Beaufort, South Carolina 29901-1128

2022 MAR -7 AM 11:21
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Re: Rodney Galimore, #332336 v. State of South Carolina
2021-CP-07-00139

Dear Ms. Roseneau:

Enclosed please find the original Final Order of Dismissal signed by the Honorable Bentley Price, in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Samantha J. Weidauer
Assistant Attorney General

SJW/jmo

Cc: Rodney Galimore, #332336