

Hon. Patricia A. Howard
Clerk of Court

Appellate Case No. 2023-000216

The Supreme Court of South Carolina
Post Office Box 11330
Columbia, S.C. 29211

February 28, 2023

Jerry L. Franklin Jr. # 132862
F2A-186
McCormick Correctional Inst.
386 Redemption Way
McCormick, S.C. 29899

RECEIVED

MAR 07 2023

S.C. SUPREME COURT

RE: Copy of Rule 59(e) motion

Dear Hon. Howard,

Enclosed is the signed Rule 59(e) motion denying Petitioner's motion. Received by Petitioner on February 08, 2023.

Also Petitioner has served a copy of the same on counsel of record on this date, postage prepaid and addressed as follows:

D. Russell Barlow, II, Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Megan Harrigan Jameson, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Appellate Case NO. 2023-000216

Respectfully Submitted,

Jerry L. Franks Jr
Pro se petitioner



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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

February 1, 2023

The Honorable Doris Poulos O'Hara
Florence County Clerk of Court
180 N. Irby Street MSC-E
Florence, SC 29501

Re: Jerry L. Franklin, Jr., #132862 v. State of South Carolina
2021-CP-33-0216

Dear Ms. O'Hara:

Enclosed please find the Order Denying Applicant's Motion for Pursuant to Rule 59(e) signed by the Honorable Michael G. Nettles 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,

D. Russell Barlow, II
Assistant Attorney General

DRB/em

cc: Jerry L. Franklin, Jr., #132862

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Jerry Lee Franklin, Jr., #132862

Applicant

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-33-0216

RECEIVED
ORDER DENYING APPLICANT'S
MOTION PURSUANT TO
RULE 59(e), SCRCP

MAR 07 2023

S.C. SUPREME COURT

This matter comes before the Court by way of Applicant's Motion Pursuant to Rule 59(e), SCRCP, to Amend, filed February 25, 2022, asking this Court to alter or amend its Order of Dismissal denying Applicant's application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's commitment orders. Applicant was indicted at the February 1986 term of the Marion County Grand Jury for murder and assault and battery with intent to kill (1986-GS-33-0019). Represented by Marvin C. Tyndall, Esquire, Applicant appeared for a plea before the Honorable Julius H. Baggett on March 10, 1986. Applicant pleaded guilty as indicted. Judge Baggett accepted Applicant's Plea and sentenced him to a term of twenty years imprisonment for assault and battery and a life term for murder. The Applicant did not appeal his sentence or conviction.

First PCRI

On October 19, 1989, Applicant filed his first post-conviction relief application. On

¹ Due to the age of the case, the State cannot provide the case number for this case as it is not listed on the public index and the State's file has been destroyed.

September 13, 1990, an evidentiary hearing was held before the Honorable Judge James E. Lockemy, at which time Applicant was present and was represented by William S. Derrick, Esquire. By Order dated November 15, 1990, Judge Lockemy denied and dismissed the application for post-conviction relief. A timely Notice of Intent to Appeal was filed on Applicant's behalf, and an appeal was perfected by the Office of Appellate Defense. The South Carolina Supreme Court denied certiorari on September 5, 1991. Applicant filed a Petition for Writ of Habeas Corpus in U.S. District Court, District of South Carolina, which was denied March 11, 1994. Applicant also filed an appeal in the Fourth Circuit Court of Appeals, and same was denied July 22, 1994.

Second PCR: 1994-CP- 33-217

Applicant subsequently filed another application for PCR on October 13, 1994. The State filed its return on October 17, 1996. On October 5, 1998, an evidentiary hearing was held before the Honorable James Brogdon, Jr., at which the Applicant was present and was represented by Harry Devoe, Esquire. By Order dated November 8, 1998, Judge Brogdon denied and dismissed the Applicant's application.

Habeas Corpus: 2003-CP-33-492

On November 5, 2002, Applicant filed a petition for habeas corpus, raising the following allegations:

1. Eradication of earned work credits created an ex post facto violation rendering petitioner guilty plea involuntary and unintelligent.
2. The trial judge failed to protect the petitioner's Fifth and Fourteenth Amendment rights to equal protection.
3. The trial court lacked subject matter jurisdiction because the indictment was defective.
4. Trial counsel was ineffective in rendering erroneous advice concerning the collateral consequences of the petitioner's guilty plea.

5. The first PCR judge erred and abused his discretion by not ruling on the Petitioner's motion for default judgment against the Respondent for failure to file a return within the time prescribed by law.
6. The first PCR judge erred in dismissing the first application without making findings of fact on specific allegations.
7. PCR counsel was ineffective in failing to object to the PCR judge allowing the State to defend against the application when the State was clearly in default.
8. PCR counsel failed to file a Rule 59(e) motion or a Rule 60(b) motion after being asked to by the Petitioner.
9. The Petitioner is being held in custody on an illegal guilty plea and is legally innocent of the charge of murder.

The Respondent made its return and motion to dismiss on March 24, 2004. The Honorable James E. Brogdon, Jr., signed and filed the order of dismissal on November 1, 2004.

Third PCR & Subsequent Appeal: 2003-CP-33-086

On February 28, 2003, Applicant filed his third PCR action. In that application, Applicant alleged he was being held in custody unlawfully on the following grounds:

1. Trial court lacked subject matter jurisdiction.
2. Ineffective assistance of counsel.
3. Prosecutorial misconduct.
4. Abuse of discretion at PCR hearing.

The Respondent made its return and motion to dismiss on November 20, 2003. An evidentiary hearing was convened on February 16, 2005, at the Florence County Courthouse before the Honorable John L. Breeden, Jr. The Applicant was present at the hearing and was represented by John R. Richardson, Esquire. The Respondent was represented by Julie M. Thames of the South Carolina Attorney General's Office. Judge Breeden signed the order of dismissal on June 23, 2005, and the case was dismissed on July 6, 2005.

Subsequently, on July 19, 2005, Applicant filed a Rule 59(e), SCRCP, motion focusing on

the subject matter jurisdiction issue, that the magistrate court had exclusive jurisdiction over his murder charge, and also continued to argue ineffective assistance of counsel and prosecutorial misconduct. On July 14, 2006, Judge Breeden issued an order of dismissal. Applicant filed a timely notice of appeal on September 1, 2006. On November 14, 2006, the Supreme Court of South Carolina issued an order of dismissal for failing to show that there was an arguable basis for asserting that the determination of the lower court was improper pursuant to Rule 227(c), SCACR. The Remittitur was issued on November 30, 2006.

CURRENT ACTION BEFORE THIS COURT

On April 27, 2020, Applicant *untimely* commenced an application for PCR relief. In his application, Applicant alleged he is being held in custody unlawfully on the following grounds:

1. Due process rights violated under fourteenth amendment
 - a. Applicant had a parole revocation hearing on April 22, 2021 and Applicant contends this hearing was unlawful and his due process rights were violated when he was denied counsel to represent him at his revocation hearing. See Morrissey v. Brewer, 8812, 5103, 408 U.S. 471, 92 S.Ct 2593, 33 L.Ed.2d 484 (1972).
2. Trial court lacked subject matter jurisdiction
 - a. Insufficient and defective indictment
3. Ineffective assistance of counsel
 - a. Failure to file a motion of discovery and/or a Brady motion
 - b. Failure to make a motion to have Applicant's murder indictment quashed
 - c. Failure to inform Applicant that no autopsy was performed on victim and the state could not prove cause of death
4. Due process rights violated under fourteenth amendment
 - a. Insufficient/defective indictment
 - b. Grand jury violated his due process rights

Respondent made its Return and Motion to Dismiss on October 22, 2021. Applicant was served a copy of the unsigned Conditional Order of Dismissal when it was sent to this Court for

review and signature on October 20, 2021. Prior to the Conditional Order of Dismissal being filed, Applicant filed a response to the Conditional Order of Dismissal on November 4, 2021. In his response, Applicant argued:

1. Respondent failed to acknowledge before this court that applicant filed and obtained an entry of default against respondent in this present application prior to respondent asking for an extension of time to file its return.
2. Applicant further contended that Respondent's conditional order of dismissal and motion for dismissal is not properly before this court absent Respondent's failure to respond to applicant's motion for an entry of default.

This Court issued a Conditional Order of Dismissal on December 8, 2021 and filed December 15, 2021. The Order found that the application was procedurally barred because the statute of limitations had expired; it was successive; it is barred by the doctrine of *res judicata*; Applicant's indictment allegation is not proper for PCR.; it fails to make a *prima facie* showing the trial court lacked subject matter jurisdiction; and Applicant has failed to make a *prima facie* showing he is entitled to relief based on his claim that his fourteenth amendment due process rights were violated because he was denied appointment of parole revocation counsel.

On January 11, 2022, Applicant filed an "Amendment to State's Conditional Order of Dismissal." This Court issued a Final Order of Dismissal on February 14, 2022, incorporating the findings of the Conditional Order of Dismissal and made specific findings regarding the arguments put forth in Applicant's "Amendment to State's Conditional Order."

Thereafter, on February 25, 2022, Applicant filed a motion pursuant to Rule 59(e), SCRCP. Respondent filed its Return to Applicant's Motion Pursuant to Rule 59(e), SCRCP, on April 1,

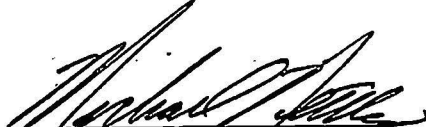
2022.² On April 18, 2022, Applicant filed a response captioned "Response/Amendment to State's Return to Applicant's Rule 59(e) Motion."

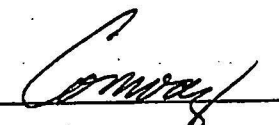
APPLICANT'S MOTION TO ALTER OR AMEND

In Applicant's motion, he asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRPC. 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 § 17-27-80 of the South Carolina Code of Laws and Rule 52(a), SCRPC. Accordingly, Applicant's motion for reconsideration is **DENIED**.

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

AND IT IS SO ORDERED this 23 day of Jan, 2023.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

, South Carolina

² Respondent's Return to 59(e), SCRPC, was sent to the Marion County Clerk of Court on April 1, 2022, as indicated by its letter and certificate of service on Applicant.