

doctor's were not present." He asserts he had a sufficient reason for not raising his allegations in his prior PCR application because of his "lack of understanding." Specifically, he contends he "did not have the ability to understand that the word 'murder' must be in the indictment." Applicant also filed a motion requesting funding for a mental evaluation.

This Court finds Applicant has not set forth a valid reason his application should not be barred by the statute of limitations or as successive. Although Ferguson provided for equitable tolling when an Applicant could demonstrate his untimely filing was the result of mental incompetency, the facts underlying Ferguson applied to an initial application for PCR—not a subsequent application. See Ferguson, 382 S.C. at 619-20, 677 S.E.2d at 602 ("If Ferguson was prevented from filing for PCR by reason of his mental incompetency, then he has not, and will not, receive his one full bite at the apple."); id. at 619, 677 S.E.2d at 602 ("Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple." (internal quotation marks omitted)). Unlike the applicant in Ferguson, Applicant has had a full bite of the apple—through his prior direct appeal, PCR action, and appeal of the denial of his first PCR action. Ferguson is factually distinct and does not set forth a basis for tolling the statute of limitations here.

Further, Applicant has not set forth a valid reason why his application should not be barred as successive. Applicant's assertion that he was unaware of an alleged issue with the indictment and only recently discovered that issue lacks merit. Applicant was present for his trial and appealed. After Applicant's appeal was dismissed, Applicant filed his first PCR application for relief. In Applicant's first PCR application and while that application was litigated, Applicant had access to his trial and appellate records. See State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981). This Court finds all claims were known or should have been known during the pendency of his

FILED
2023 MAY -2 PPM 2:51
CLERK OF COURT
CHESTER CO. S.C.




first PCR action, and, accordingly, this action is successive and not timely under S.C. Code Ann. § 17-27-20(C). See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Applicant has failed to overcome the procedural threshold of providing specific reasons, factual or legal, why the application should not be dismissed.

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 such showing based on the information set forth in his response; therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief (2022-CP-21-1221) is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

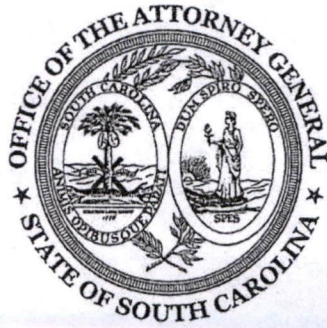
This Court hereby advises Applicant that should he wish to procure appellate review, he must file and serve a notice of appeal within thirty days of this Order. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this _____ day of 4/24, 2023.


BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit

_____, South Carolina

FILED
2023 MAY -2 PM 2:51
CLERK OF COURT
CHESTER CO. S.C.



ALAN WILSON
ATTORNEY GENERAL

March 21, 2023

The Honorable Brian M. Gibbons
Chief Administrative Judge
P.O. Drawer 580
Chester, SC 29706

Re: **Bobby Ray Gladden, #231803 v. State of South Carolina**
Case No: 2022-CP-12-00366

Dear Judge Gibbons:

Enclosed please find the proposed Final Order of Dismissal in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal and Applicant's Response to the Conditional Order for your review.

If this Order meets your approval, please sign and forward to the Chester County Clerk of Court for filing.

Sincerely,

D. Russell Barlow II
Assistant Attorney General

DRB/sce

Enclosure(s)

cc: Bobby Ray Gladden, #231803

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
)
 Bobby Ray Gladden, #231803,)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

Case No.: 2022-CP-12-00366

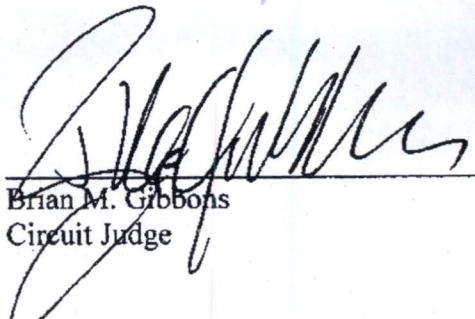
**ORDER DENYING APPLICANT'S MOTION
 FOR LEAVE TO AMEND MOTION FOR
 EXPERT FUNDS AND OBJECTION TO
 CONDITIONAL ORDER OF DISMISSAL**

FILED
 FEB 17 2 3:55
 CLERK OF COURT
 6th JUDICIAL CIRCUIT
 S.C.

This matter comes before the Court by way of Applicant's motion objecting to the granting of the Respondent's motion for conditional dismissal of the Applicant's application for post-conviction relief. The Applicant filed this motion effectively requesting the court to reconsider its position on granting the conditional dismissal. Additionally, before the court is the Applicant's Motion for leave to amend motion for expert funds. The Applicant filed his application for post-conviction relief from his 1996 conviction August 22, 2022, on the grounds the trial court lacked jurisdiction to convict for deficiencies in the indictment as well as the Applicant's competency to stand trial. The court granted the Respondent's motion for conditional dismissal on December 19, 2022. After further review and deliberation, the court respectfully denies the Applicant's motions.

IT IS SO ORDERED.

February 16, 2023



 Brian M. Gibbons
 Circuit Judge

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER)	FOR THE 6th JUDICIAL CIRCUIT
Bobby Ray Gladden, #231803)	C/A No. 2022-CP-12-00366
Applicant,)	
v.)	OBJECTION TO THE FINAL
STATE OF SOUTH CAROLINA)	ORDER OF DISMISSAL
Respondent.)	
_____)	

This matter is before this court by way of Applicant's motion objecting to the granting of the Respondent's motion for conditional dismissal of the Applicant's application for post conviction relief. Even if the court denied motion for expert funds, the trial court lacked jurisdiction to try the murder case, on the grounds that the indictment is defective.

Applicant objects to the use of the term deficiencies in the indictment. See Rains, 3 McCord 533 (1826). This case was decided in common law and murder is a common law crime. The lack of the word murder is a technicality, an hearing would resolve whether this technical deprives the court of jurisdiction.

Even if it don't criminal intent is a element of the crime of murder, from which the jury was not charge and this violates Winship's due process clause. 37 U.S. 358.

These two are the only issues before the court. The applicant is border line retarded in this court knows that. The questions before the court is whether the court had the power to hear the case. Gentry, 363 S.C. 93, and whether petitioner had the understanding to present the claims earlier in a petition.

In closing issue related to subject matter jurisdiction can be raised at any time? The order denying Applicant's motion for leave to amend motion for expert funds and objections to conditional order of dismissal was dismissed without prejudice. See Gamble v State, 298 S.C. 176 (1989). This final order does not give a finding of fact and conclusion of law on these two claims. This maybe a case of Martinez v. Ryan, 566 U.S. i (2012) where the court concluded that inadequate assistance of counsel at initial review collateral proceeding may established case for a prisoner's default of a claim of ineffective assistance of trial counsel, whereas trial counsel saw the defective indictment and trial counsel knew the judge did not charge criminal intent in his jury charge.

QUESTION OF FACT

Where a defendant alleges, in a successive PCR application, facts that would established an exception to either the statute of limitations or the prohibition against successive PCR application, and those facts are not conclusively refuted by

* Applicant could have raised this issue under newly discovered evidence since he filed it within one year after discovery.. See McCoy Supra.

record before the court, a question of fact is raised which can only be resolved by a hearing. Robertson v. State, (S.C. 2016) 418 S.C. 505, 795 S.E.2d 29.

And the McCoy court said, for the reasons stated above, we find the PCR judge erred in summarily dismissing Petitioner's application because genuine issue of material fact as to whether his claim is successive or time barred. thus, we reverse the dismissal of Petitioner's second PCR application and remand the matter for a hearing. McCoy v. State, 401 S.C. 363, 737 S.E.2d 623.

CONCLUSION

Thus Applicant ask this court for an hearing.

Dated

April 29 2023

Bobby Ray Gladden