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SC Courts of Appeals

RICHLAND COUNTY
STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL CIRCUIT
2023 AUG 22 PM 3:53

The State of South Carolina C.C.P., G.S., & E.P. 2007GS401938-40; 2007GS402000-03;
2007GS402048
J556197, 96, 99; K 195896-99; J556198

-v-

ORDER OF DISMISSAL WITH PREJUDICE

Randolph Ashford,
Defendant

This matter comes before this Court by way of Defendant's pro se motion, titled, "Motion for New Trial Based On After-Discovered Evidence" on January 31, 2023. Defendant's pro se filing included an array of documents in support of the motion, one of which was titled "Affidavit of Randolph Ashford." In Defendant's filing, he asserts two (2) grounds for relief:

1. Defendant asserts an eyewitness inaccurately testified that he was wearing a green hat. Defendant asserts the green hat recovered from the crime scene did not belong to him.
2. Defendant asserts an EMS First Responder inaccurately testified that Defendant was provided medical care when he was captured at the scene of the home invasion.

The State, represented by Walt Whitmire, Esq. of the Richland County Solicitor's Office, filed its responsive pleadings on August 16, 2023. This Court has reviewed the pleadings and prior court records related to Defendant's conviction. In its motion to dismiss and motion for a judgment on pleadings, the State argued Defendant's arguments are facially defective because Defendant raised allegations of purported after-discovered evidence that Defendant conceded he was privy to in 2009. This Court agrees. Additionally, Defendant failed to make a prima facie showing that the purported after-discovered evidence could have a reasonably changed the result of his trial.

PROCEDURAL HISTORY

On February 27, 2007, the armed Defendant committed a string of successive carjackings that culminated in a home invasion and sexual assault on Booth Street, where Defendant held his final victim hostage. The crime spree concluded when deputies with the Richland County Sheriff's Department deployed tear gas into the Booth Street residence. Deputies successfully extracted the final victim and detained and arrested Defendant.

The State called Defendant's case to trial on March 31, 2009. The Fifth Circuit Solicitor's Office was represented by Luck Campbell, Esq. and Defendant was represented by Deon O'Neil, Esq. The jury found Defendant guilty of three (3) counts of Carjacking (2007GS402000; 2007GS402001; 2007GS402002) two (2) counts of Kidnapping (2007GS402003; 2007GS401938); Burglary, First Degree (2007GS402048); Assault with Intent to Kill (2007GS401939); and Assault and Battery of a High and Aggravated Nature (2007GS401940. Judge Thomas G. Cooper sentenced Defendant to an aggregate term of (40) years imprisonment and ordered him to register as a sex offender.

Defendant filed a notice of appeal. Wanda Carter, Esq., with the Office Appellate Defense filed an Anders¹ brief. The Court of Appeals dismissed Defendant's appeal in 2012. See 2012-UP-035.

After the Remittitur was issued, Defendant filed a Post-Conviction Relief (PCR) application in 2012. See 2012-CP-40-1053. A hearing on this action was convened on March 31, 2015 at the Richland County Courthouse before Judge Brooks P. Goldsmith. The State was represented by Clay Mitchell, Esq. of the South Carolina Attorney General's Office and Defendant was represented by David Belding, Esq. Judge Goldsmith denied Defendant's PCR Action. In a

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1369 (1967)

written order issued on November 31, 2015, Judge Goldsmith found Defendant's convictions were supported by evidence of overwhelming guilt. Judge Goldsmith stated "[n]otably, [Defendant] was forcefully removed from [final victim's] residence after a standoff where hostage negotiations took place." See 2012-CP-40-1053, Order of Dismissal, p.13. Defendant has since exhausted his appeals in State Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29, SCRCrimP (emphasis supplied). "The granting of a new trial because of after-discovered evidence is not favored, and [appellate courts] will affirm the trial court's denial of such a motion unless the trial court abused its discretion. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999).

This Court finds Defendant's grounds of purported after-discovered are facially without merit. This Court grants the State's motion and finds Defendant failed to assert a ground for relief that could and should have been raised within a year of discovery and knowledge. See Rule 29, SCRCrimP. Defendant raises two grounds of purported after-discovered evidence in his filing. First, Defendant challenges a lay witness's in camera identification testimony. Second, Defendant challenges the testimony of a first responder. Defendant was a participant in his trial, observed the

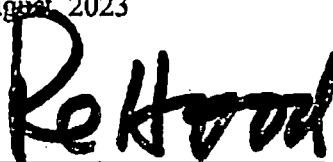
witness testimony at issue, and thereby would have had actual knowledge of the purported evidentiary issues he now raises. Therefore, this Court finds Rule 29(b), SCRCrimP bars defendant from further litigation on the matter.

This Court also finds Defendant failed to make a prima facie showing that allegations of purported after-discovered evidence would necessitate an evidentiary hearing. This Court finds Defendant failed to assert a ground for relief that could have changed the outcome of trial. See Spann, 334 S.C. at 619–20, 513 S.E.2d at 99. The State presented numerous eyewitnesses who identified Defendant during his crime spree. Defendant was caught in the act of the home invasion. And Defendant testified in own defense to his purported state-of-mind when he was detained and arrested. See Trial Transcript pp.325—1009.

IT IS THEREFORE ORDERED THAT:

1. The motion for After-Discovered Evidence is denied and dismissed with prejudice;
2. The Clerk of Court remove Defendant's Motion from the August 29, 2023 General Sessions Non-Jury Motions Hearing Docket.

AND SO IT IS ORDERED this 22 day of August, 2023



ROBERT E. HOOD
Chief Administrative Judge



Columbia South Carolina