

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE COURT OF COMMON PLEAS

Samuel T. Lory, #296099,

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP- 30 - 649
State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____.
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Final Order of Dismissal

Dated at _____, South Carolina, this _____ day of _____, 20_____.

PRESIDING JUDGE

This judgment was entered on the 15th day of January, 2013, and a copy mailed first class this 15th day of January, 2013 to attorneys of record or to parties (when appearing pro se), as follows:

Samuel Timothy Lory, Pro Se

J. Rutledge Johnson, Esq./
Asst. Attorney General

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn M. Lancaster
CLERK OF COURT

STATE OF SOUTH CAROLINA AND MASTER THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) EIGHTH JUDICIAL CIRCUIT

2013 JAN 15 P 3: 06

Samuel T. Gary, #296099,

2012-CP-30-0649

LAURENS COUNTY
Applicant, OF COURT

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 16, 2012. The Respondent (the State) made its Return and Motion to Dismiss on October 18, 2012, 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 dated October 19, 2012, 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. Attached to this Final Order and incorporated herein is an Affidavit of Service dated December 7, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Applicants Return to the State Conditional Order of Dismissal," the Applicant argues he has "after-discovered evidence" through a South Carolina Law Enforcement Division (SLED) laboratory report, which would entitle him to a new trial. He also asserts a defect in the grand jury proceedings which led to his indictments. 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 reason has not been shown why the Conditional Order of Dismissal should not become final.~~

~~First~~ as to the "after-discovered evidence," while the Applicant has properly produced the SLED report, he fails to prove when he discovered this evidence. According to S.C. Code Ann. § 17-27-45(c), the Applicant must file "within one year after the date of actual discovery of the facts" or "after the date when the after the facts could have been ascertained by the exercise of reasonable diligence" to be within the statute of limitations. As the burden of proof is on the Applicant to prove he filed this application within the time prescribed by § 17-27-45(c), ~~he has provided no documentation or other proof to support his contention that the SLED report is "after-discovered evidence."~~ ~~Second~~, according to Lanier¹, the evidence must be of such nature that it would probably change the result if a new trial is granted. The Applicant pled guilty pursuant to negotiations. Thus, he has failed to make a *prima facie* showing how this "after-discovered evidence" would change the outcome of his negotiated guilty plea.

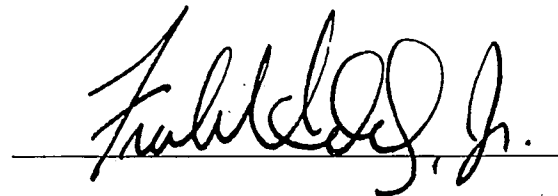
~~Additionally~~, as to the subject-matter jurisdiction argument, the Applicant has shown no reason why this issue was not raised in his 2010 PCR application (2010-CP-30-0539). Further, S.C. Code § 17-27-90 states "[a]ll grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or

amended application.” 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, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The 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 8th day of January, 2012.



Frank R. Addy, Jr.
Presiding Judge
Eighth Judicial Circuit

Alberville, South Carolina.

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

1 Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005).

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CT

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

Pursuant to Rule 4(d)(2), SCRCF, the Director of the South Carolina Department of Corrections has designated Sgt. J. Tuttle (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 McCormick)
AFFIDAVIT OF PERSONAL SERVICE

On this 7 day of December, 2012, I served the signed Conditional Order of Dismissal on Inmate Samuel Gary, SCDC Inmate No. 296099 by delivering personally and leaving a copy of the same at McCormick Correctional Institution, MCT, South Carolina. Deponent is not a party to this action.

s/ [Signature]
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7 day of Dec., 2012
Joyce R. Young (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/1/2021

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, MCT, McCormick County, South Carolina, this 7 day of December, 2012.

s/ [Signature] 296099
Inmate Signature
SCDC No. 296099

List case number here
2012-CP-30-0649

CLERK OF COURT