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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHEROKEE COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No.: 2018-CP-11-00172

Thomas Thompson #80681

Appellant,

vs.

State of South Carolina

Respondent.

NOTICE OF APPEAL

I, Thomas Thompson, do hereby file Notice of Appeal in the above case. A Petition for Writ of Certiorari will be filed in the South Carolina Supreme Court.



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TyRCI U8-216
200 Prison Road
Enoree, S.C. 29335

Chelsea Faith Marto
Assistant Attorney General
Post Office Box 11549
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March 4, 2024

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January 29, 2024

Thomas Neil Thompson, SCDC#80681
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Enoree, SC 29335

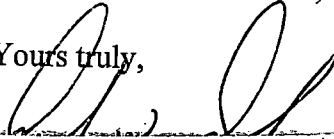
RE: Thomas Neil Thompson vs. The State

Dear Mr. Thompson:

Please find enclosed the order from your hearing. If you want to appeal this case, please let me know. I do not believe an appeal will benefit you.

RICHEY AND RICHEY, P.A.

Yours truly,

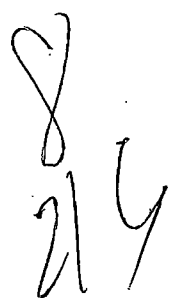


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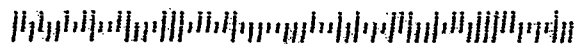
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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
)
)
Thomas Thompson, #80681,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS)
FOR THE SEVENTH JUDICIAL CIRCUIT)
)
)
S.C. SUPREME COURT

Case No.: 2018-CP-11-00172

ORDER OF DISMISSAL

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CLERK OF COURT
2021 JAN 24 P 4: 55
BRANDY W. MCREE
CHEROKEE COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 21, 2018. Respondent made its return and motion to dismiss on March 3, 2020, requesting the matter be summarily dismissed for failure to establish a *prima facie* case of newly discovered evidence. The Honorable J. Mark Hayes, II, circuit court judge, issued a conditional order of dismissal on March 19, 2020. Upon Judge Hayes' request, dated October 28, 2020, a hearing on the State's motion to dismiss was scheduled and held on February 17, 2021, virtually via Webex. Rodney W. Richey, Esquire, represented Applicant. Then-Assistant Attorney General William H. Ray represented Respondent.

No testimony was taken at the hearing. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its December 1975 term, the Cherokee County Grand Jury indicted Applicant for Murder (1975-GS-1-520). On December 11, 1975, Applicant appeared before the Honorable Robert W. Hayes, circuit court

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judge, and pled guilty as indicted. Judge Hayes sentenced Applicant to life imprisonment. At the time the offense was committed, South Carolina law permitted parole eligibility after ten years' service of an individual serving a life sentence for murder.

On February 6, 1985, Applicant made his first appearance before the parole board. He was denied parole. He continued to appear before the parole board an additional sixteen times, with the last appearance occurring on October 21, 2015. The reasoning for the most recent denial was the nature and seriousness of the offense, indication of violence in this offense, and use of a deadly weapon during the commission of the crime. A notice of appeal before the Administrative Law Court was filed, Applicant alleging that the decision was arbitrary and capricious, violated ex post facto, and equal protection, and the constant denial of parole negated the sentencing authority of the court. Respondent responded, denying the allegations. On March 30, 2016, the Honorable John D. McLeod, Administrative Law Court Judge, deciding to dismiss the appeal.

On April 14, 2016, the Applicant filed a notice of appeal before the South Carolina Court of Appeals. Respondents filed their brief on June 20, 2016. The Court of Appeals filed an order on July 5, 2017, affirming the holding of the lower court. The remittitur was issued on September 26, 2017. Applicant filed this PCR application on March 21, 2018.

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because the “[c]ourt stipulated parole was to be earned through good behavior – parole board stipulates court did not have this authority.”

At the PCR hearing, Applicant proceeded forward on the following allegation:

Newly discovered evidence regarding mis-advice concerning his parole eligibility.

All other allegations raised in his initial application and amendments are deemed waived

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and abandoned and, accordingly, will not be addressed in this order.


Summary of the Arguments

After reciting the procedural history, Respondent stated that Applicant was initially parole eligible after serving ten years' imprisonment because he was facing a life sentence. Respondent moved to dismiss for failure to establish a *prima facie* case of newly discovered evidence concerning misinformation concerning parole eligibility and how that rendered the plea invalid. Respondent pointed out that parole was denied, in part, because of the seriousness of the offenses. Respondent stated that the motion to dismiss hearing was requested by the Chief Administrative Judge at the time, who declined to sign the final order of dismissal.

Applicant argued that he was told he would be parole eligible for good behavior, but that he was denied parole because of the seriousness of the offense. He stated his co-defendant was released years ago, though he acknowledged that the co-defendant did not have a weapon and Applicant was the main perpetrator at the time. He stated Applicant was sixteen years' old at the time of the offense. He stated that *Aiken v. Byars*, 765 S.E.2d 572 (S.C. 2014). He requested release as a form of relief.

Respondent argued that it was unlikely that parole eligibility was the reason for entering the plea. Respondent argued the application was untimely and was not filed within a year of discovering the alleged newly discovered evidence. Respondent argued that Applicant was denied parole in 2015 and the application was filed in 2018.

Applicant argued that the remittitur from his appeal from the denial of parole eligibility was issued in December 2017. Respondent argued that the facts were discovered before the remittitur was issued.

 This Court pointed out that Applicant was first denied parole in 1985. Applicant stated

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that he was told he would be eligible for parole, but that he was never promised parole. He also stated that the State has convicted others of more egregious crimes who have received less time in prison.

Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, prior PCR and habeas corpus filings, and the records for this PCR action. Pursuant to South Carolina Code Annotated, Sections 17-27-70 and -80, this Court dismisses the application based upon the following findings:

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Here, Applicant alleges he is entitled to PCR relief because he pled under the impression that he could get out on parole after ten years served with good behavior and that the Court

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would not have discretion over whether parole would be granted. Applicant's alleged discovery does not constitute newly discovered evidence. Applicant was first denied parole in 1985 and proceeded to seek parole sixteen additional times, before stopping and filing this application three years later. Applicant's allegation of newly discovered evidence is not timely, because he presumably knew he would not receive parole years before the application was filed. Applicant's new knowledge regarding parole conditions is not material. Applicant presumably had other issues he considered when deciding whether to plead guilty or go to trial other than the belief he had concerning parole eligibility, such as the weight of the evidence against him and the weaknesses in any defenses he would assert at trial. This is particularly true considering his admission that he was never promised he would be released on parole. Additionally, his previous knowledge regarding the possibility of parole upon good behavior shown is unrelated to his guilt or innocence regarding the crime. Further, any argument asserting he would not have taken the plea does not sufficiently support a finding that Applicant's plea made without knowledge of the evidence is so unfair that it constitutes injustice entitling him to post-conviction relief. Accordingly, this Court shall the application because Applicant's allegation that he is entitled to PCR relief because of newly discovered evidence is without merit.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d

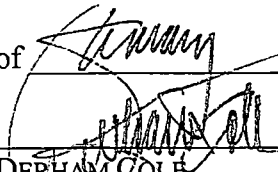
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395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 18 day of February, 2024.



 J. DERHAM COLE
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina.

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 CHEROKEE COUNTY, SC

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