

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Jocelyn Newman, PCR Action Judge  
2023-CP-40-06647

**RECEIVED**

**Sep 11 2024**

**S.C. SUPREME COURT**

FAI'QUAN SWINDELL, #384536,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Fai' Quan J Swindell appeals the denial of his post-conviction relief application. The post-conviction relief action was summarily dismissed by the Honorable Jocelyn Newman. The final order of dismissal was filed on August 19, 2024. Counsel received notice of the filed order on August 22, 2024.

/s Chelsey F. Marto  
Chelsey F. Marto, Esquire  
Attorney for the Applicant  
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Russ Barlow, Esquire  
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Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Fai'Quan Swindell, #384536, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT  
 CASE NO. 2023-CP-40-06647

**FINAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
 2024 MAY 19 AM 11:30  
 CHRISTINE W. McLEOD  
 CLERK OF COURT

This matter comes before this Court by way of a successive post-conviction relief (PCR) action commenced by Fai'Quan Swindell (Applicant) on December 14, 2023. Respondent made its Return and Motion to Dismiss requesting this action be summarily dismissed because it was untimely, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014).

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 filed on May 20, 2024, provisionally denying and dismissing this action while giving counsel for Applicant twenty days from the date of service of said order in which to show why the Conditional Order of Dismissal should not become final. ~~Attached to this Final Order and incorporated herein by reference is a certificate of service dated May 28, 2024, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant's counsel, Chelsey F. Marto, Esquire.~~

*Applicant's counsel*

On July 5, 2024, Ms. Marto filed a response to the Conditional Order of Dismissal wherein counsel indicated she was unaware of any grounds that would render a final order of dismissal inappropriate but asking for an extra thirty days for Applicant to reply. Applicant has failed to file any response within the requested time frame with the Richland County Clerk of Court.

This Court finds Applicant has failed in his burden to establish there is a genuine issue of material fact such that he should be granted an evidentiary hearing on his PCR application. S.C. Code Ann. § 17-27-70(c); Leamon v. State, 363 S.C. 432, 434, 61 1 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). This Court reasserts its findings in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014).

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 a showing based on the information set forth in his application and his responses, and, 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.

[SIGNATURE PAGE FOLLOWS]

  
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**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. 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 14<sup>th</sup> day of August, 2024.



JOCELYN NEWMAN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

2024/08/14