

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kevin Smith, #164290

Applicant

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) CASE NO. 2019-CP-40-04208

) **FINAL ORDER OF DISMISSAL**

2025 FEB 11 PM 3:47
RICHLAND COUNTY
FILED
HANNETTE W. McBRIDE
CLERK

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Kevin Smith (Applicant), filed on July 30, 2019.¹ On October 19, 2019, Applicant filed his "Notice of Motion-Motion for Default Judgment Pursuant to Rule 55(e) South Carolina Rules of Civil Procedures" and his "Affidavit of Kevin Smith in Support of Motion for a Default Judgment Pursuant to Rule 55(e) South Carolina Rules of Civil Procedures." On October 29, 2019, the Honorable Jocelyn Newman denied Applicant's motion for default.

On April 6, 2020, Applicant filed his "2nd Notice of Motion-Motion for Default Judgment Pursuant to Rule 55(e) South Carolina Rules of Civil Procedures" and his "2nd Affidavit of Kevin Smith in Support of his 2nd Motion for a Default Judgment Pursuant to Rule 55(e) South Carolina Rules of Civil Procedures."

On September 25, 2023, Applicant filed his "Notice of Motion – Motion for a Writ of Mandamus Pursuant to Rule 65(f)(1) South Carolina Rules of Civil Procedures."

On April 8, 2024, Applicant filed his "Plaintiff's Request for Entry of Default Upon the

¹ Applicant labeled his filing on the civil action coversheet as an "Other (999)" filing which he wrote in "Motion for Vacation of Sentence/Expungement of Sentence Pursuant to SCRCivProc, 60(b)(3)(4)(5)." Respondent construed Applicant's filing as a post-conviction relief application based on the nature of the allegations within Applicant's filings.

Calendar Pursuant to Rule 55(e) S.C.R.Civ.Procedures."

Respondent made its Return and Motion to Dismiss on May 21, 2024, requesting this action be summarily dismissed as untimely, barred by the statute of limitations, successive to Applicant's previous two PCR actions, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, 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 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.

On June 27, 2024, Applicant filed a letter to this Court indicating that the Richland County Clerk of Court was refusing to file his reply to the Conditional Order of Dismissal. On July 25, 2024, Applicant filed a similar letter indicating the same as the June 27th letter.

On December 19, 2024, Applicant filed his "Notice of Motion – Motion to Strike Defendant's Motion to Dismiss" and his "Affidavit of Kevin Smith [Plaintiff] in Support of his Motion to Strike Defendant's Motion to Dismiss." Applicant contends in his filings that he never filed a PCR application, the Respondent is attempting to commit fraud, and a request for the Court to strike Respondent's motion to dismiss and grant his motion for default.

On December 19, 2024, a hearing convened on Respondent's motion to dismiss via Webex before the Honorable Daniel Coble. Applicant was present and proceeded *pro se*. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. After hearing arguments, this Court took the matter under advisement. On January 8, 2025, at 01:24 p.m., this

Court issued a Form 4 Order granting Respondent's motion to dismiss.

Also on January 8, 2025, at 03:07 p.m., Applicant filed his "Affidavit of Plaintiff Kevin Smith Re: Defendant/Respondents Violations of South Carolina Code of Law Sections: § 14-9-210, § 16-9-20(a)(2), § 16-9-20, § 16-9-30, § 16-13-110, § 17-25-10 Violations of United States Code Title 28 28 USCA§ 1621, § 1622, § 1623." Within this filing Applicant outlines the same arguments he has repeatedly presented to this Court and previous courts.

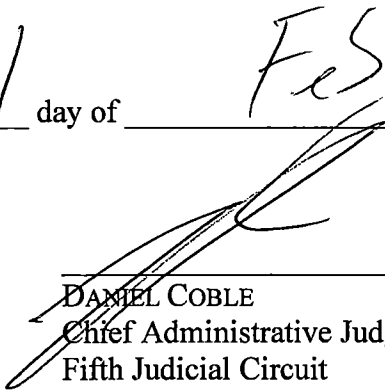
This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, barred by the statute of limitations, successive to Applicant's previous two PCR actions, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Furthermore, this Court reasserts its findings in the Conditional Order of Dismissal and grants Respondent's motion to summarily dismiss Applicant's Rule 60(b), SCRPC, motion. 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 before this Court, 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|


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 11 day of Feb, 2025.



DANIEL COBLE
Chief Administrative Judge
Fifth Judicial Circuit


_____, South Carolina.