

STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )

IN THE COURT OF COMMON PLEAS )  
FOR THE EIGHTH JUDICIAL CIRCUIT )

Derek J. Brown, #297592 )  
Applicant, )

Case No.: 2019-CP-30-0948

v. )

**FINAL ORDER**  
**OF DISMISSAL**

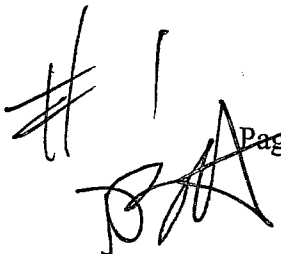
State of South Carolina, )  
Respondent. )

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Derek J. Brown on October 30, 2019. Respondent made its Return, requesting the application be summarily dismissed. The Court issued a conditional order of dismissal expressing its intention to summarily dismiss the PCR action and granting Applicant twenty days from the date of service of the order upon him to explain why it should not become final. The conditional order was served upon Applicant on November 17, 2023. Applicant has since submitted a "Rule 59(e), SCRC Motion" in response to the Court's conditional order of dismissal.

The Court finds that Applicant has failed to adequately explain why the conditional order of dismissal should not become final. Accordingly, the Court grants the State's motion to summarily dismiss this PCR action with prejudice.

**I. Procedural History**

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the September 2001 term of the Laurens County Grand Jury for Murder (2001-GS-30-0720, Count 1) and Possession of a Weapon During the Commission of a Violent Crime (2001-GS-30-0720, Count 2). Applicant was represented by Geddes D. Anderson, Esquire. Assistant Solicitor Lance Sheek prosecuted the case.

  
Page 1 of 7

LAURENS COUNTY  
CERK OF COURT  
2023 FEB -5 A 11:03  
K. NICHELLE SIMMONS

The case was initially called before the Honorable James W. Johnson, Jr. on August 25, 2003. Following a *Jackson v. Denno* hearing, the case was continued on motion of the co-defendants due to an amendment of the indictment by the prosecution.<sup>1</sup> The case was recalled before Judge Johnson and a jury on October 20, 2003. On October 23, 2003, Judge Johnson granted a motion for directed verdict for co-defendant Latimore. (Tr. 985-86). On October 29, 2003, the jury found Applicant and co-defendant Shelton guilty as charged. (Tr. 1356-57). Judge Johnson sentenced Applicant to life imprisonment for murder and five years for possession of a weapon during the commission of a violent crime to run concurrently.

A timely Notice of Appeal was filed, and an appeal was perfected on Applicant's behalf. The Initial Brief of Appellant was filed on September 8, 2005. The Initial Brief of Respondent was filed on January 27, 2006. The Final Brief of Appellant was filed on July 18, 2006. In his Final Brief of Appellant, counsel raised the following ground:

The judge erred by refusing to direct a verdict acquitting Derek Brown of the crimes charged, where the state failed to introduce any evidence that he committed or aided and abetted the commission of the murder of Philip Johnson.

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Derek J. Brown*, Unpublished Op. No. 2006-UP-400 (S.C. Ct. App. filed December 7, 2006). A pro se Petition for Rehearing was denied on January 18, 2007. The Remittitur was issued on February 22, 2007.

**2007-CP-30-0082**

Applicant subsequently filed his first PCR application on February 7, 2007, and amendments on May 15, 2007 and April 30, 2009. In his application, Applicant alleged he was being held in custody unlawfully for the following reasons:

---

<sup>1</sup> Applicant had two co-defendants: (1) Corey M. Shelton and (2) Ricky A. Latimore.

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct
4. Subject Matter Jurisdiction
5. Jury Tampering
6. Denial of Due Process

Respondent made its Return on or about February 26, 2008. An evidentiary hearing into the matter was convened on May 1, 2009, at the Newberry County Courthouse. Applicant was present at the hearing and represented by William T. Toal, Esquire. On January 28, 2010, the Honorable D. Garrison Hill issued an order denying and dismissing Petitioner's application for post-conviction relief with prejudice on November 24, 2009.

A timely Notice of Appeal was filed following the denial of PCR. On August 19, 2011, the South Carolina Supreme Court granted the petition for a writ of certiorari in part. On May 9, 2012, the Supreme Court dismissed the writ of certiorari as improvidently granted. *Brown v. State*, Op. No. 2012-MO-014 (S.C. Sup. Ct. filed May 9, 2012) (dismissed as improvidently granted). On May 30, 2012, the Remittitur was issued.

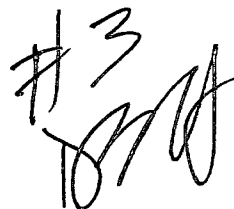
**0:12-2988-TMC-PJG**

On October 12, 2012, Applicant subsequently *pro se* filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. That Petition was dismissed by Order dated September 25, 2014. Applicant timely appealed the Court's judgment in C/A No. 14-7611 to the United States Court of Appeals for the Fourth Circuit, and the appeal was dismissed on April 7, 2015.

**II. Current Action Before Court**

In his current, second Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Handwritten signature and the number 3.

2. Actual Innocence/Manifest Miscarriage of Justice
3. Denial of due Process/structural errors

Applicant seeks the following relief:

1. Grant an evidentiary hearing to allow the taking of evidence that if true entitles Applicant to relief as the issue complained of resulted in the conviction of an innocent man.

Applicant filed an amended application on July 7, 2020, raising the following issues:

1. Ineffective Assistance of Counsel for failure to investigate.
2. Newly Discovered Evidence
3. Fraud Upon the Court:

“Failure of counsel and the Court, to investigate the laws of South Carolina as to whether they were ‘affixed’ with the impression of the Great Seal of South Carolina Section 16-1-16 of the 1976 Code, as last amended by Act 184 of 1993.”

Respondent filed its Return and Motion to Dismiss the application. This Court issued a Conditional Order of Dismissal finding that Applicant’s current PCR application is untimely, improperly successive, barred by the doctrine of *res judicata*, and barred for failure to establish a *prima facie* case of newly discovered evidence.

Applicant has now responded, arguing that the Court’s adoption of the State’s proposed order denied him an independent judicial determination of his PCR claims. Reciting the language of the Uniform Post-Conviction Procedure Act, he insists that he filed his current PCR application within one year of his discovery of “material facts, not previously presented and heard, that require vacation of Applicant’s conviction and sentence.” He further claims that Rule 71.1(d), SCRPC, requires that he be appointed counsel prior to the summary dismissal of his PCR action; then, inconsistently, he argues Rule 71.1(d), SCRPC, is constitutionally inadequate because it does *not* require appointment of counsel when a PCR application is dismissed without a hearing.

Before the Court are the Laurens County Clerk of Court’s records concerning Applicant’s convictions and sentences, Applicant’s SCDC records, the records of Applicant’s previous PCR



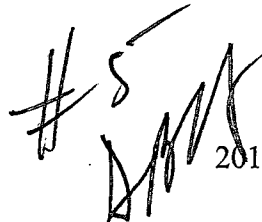
actions, and the records of this PCR action including Applicant's response to the conditional order of dismissal.

### **III. Findings and Conclusions**

The Court finds Applicant has failed to articulate any reason why this Court's conditional order of dismissal should not become final.

Applicant's contention that the Court deprived him of judicial review by adopting the State's proposed conditional order is meritless. The Supreme Court has recognized that the practice of requiring a prevailing party to draft a proposed order is not improper. *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency."), *see also* 56 Am. Jur. 2d *Motions, Rules, and Orders* § 50 ("There is nothing improper or irregular in a trial judge signing an order which has been prepared by the prevailing party."). This Court impartially considered the issues presented in Applicant's initial and amended applications for post-conviction relief, as well as those raised by the State's return and motion to dismiss. The order signed by the Court reflects the Court's determination of the issues.

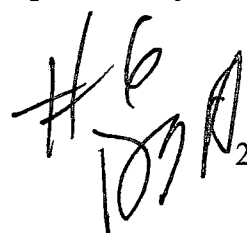
Next, although Applicant insists that he has made a *prima facie* showing that he is entitled to relief, he does not address the Court's finding that the "newly discovered evidence" pertaining to the Great Seal cannot support granting post-conviction relief. Even if this Court assumes (as it must, at the summary dismissal stage) that Applicant's factual allegations are true, the mere fact that there is no visible impression of the Great Seal on 1993 Act No. 184 does not render Applicant's conviction under that statute unlawful. As discussed in the Court's conditional order, strict compliance with the Great Seal provision is not essential to valid legislation; what matters is that the Act has been ratified by the presiding officers of the General Assembly, approved by the

Handwritten signature and initials in black ink, appearing to be 'H S' and 'D M'.

Governor, and enrolled in the Office of Secretary of State. Applicant has not presented any argument against this determination by the Court. Applicant's contention that his allegations merit a hearing is merely conclusory and does not constitute a sufficient reason not to make final the Court's conditional order of dismissal.

Finally, Applicant is patently not entitled to appointment of counsel pursuant to Rule 71.1(d), SCRPC, because this Court has affirmatively found that the application does *not* "present questions of law or fact which will require a hearing." Applicant's claim that he is constitutionally entitled to the appointment of counsel in this matter is similarly meritless; there is no constitutional right to counsel in post-conviction relief cases. "We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, . . . and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further." *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). South Carolina law provides for counsel to be appointed in post-conviction relief cases only where the applicant has been sentenced to death (S.C. Code Ann. § 17-27-160(B)) or where the application presents questions of law or fact requiring a hearing (Rule 71.1(d), SCRPC). In so providing, South Carolina gives PCR applicants *more* assistance than the constitution requires, not less. Applicant's case meets neither of these criteria, so he is not entitled to appointment of counsel in this matter.

The Court's conditional order found that, apart from his meritless "Great Seal" argument, Applicant had presented no allegations that could not have been addressed either at trial, on direct appeal, or in his initial post-conviction relief application. Applicant has not explained why that finding was incorrect. Therefore, the Court finds Applicant has presented no reason for this Court to excuse his failure to comply with the procedural requirements of the Uniform Post-Conviction Procedure Act. Because Applicant has not sufficiently explained why the Conditional Order of




Dismissal should not become final, the Court now grants the State's motion to summarily dismiss Applicant's PCR action. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 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).

#### **IV. CONCLUSION**

**IT IS THEREFORE ORDERED** that, for the reasons set forth above and in the Court's Conditional Order of Dismissal, this 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 16 day of JAN, 2025.

  
DONALD B. HOCKER  
~~Chief Administrative Judge~~  
Eighth Judicial Circuit

Leamon, South Carolina

#7



ALAN WILSON  
ATTORNEY GENERAL

January 29, 2025

The Honorable Michelle Simmons  
Laurens County Clerk of Court  
Post Office Box 287  
Laurens, SC 29360-0287

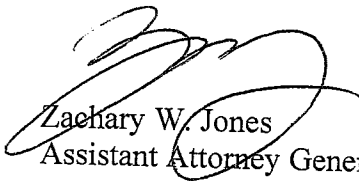
**Re: Derek J. Brown, #297592 v. State of South Carolina**  
**2019-CP-30-00948**

Dear Ms. Simmons,

Enclosed please find the original Final Order of Dismissal signed by the Honorable Donald B. Hocker, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,

  
Zachary W. Jones  
Assistant Attorney General

ZWJ/zew  
Enclosure

cc: Derek J. Brown, #297592

LAURENS COUNTY  
CLERK OF COURT  
1 2025 FEB - 5 A 11: 03  
K. MICHELLE SIMMONS