

J. FALKNER WILKES

Attorney at Law

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November 18, 2013

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211
Fax: (803) 734-1499

RECEIVED

NOV 21 2013

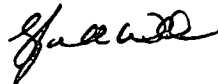
S.C. Supreme Court

Re: George Jackson, 302760 v. State of South Carolina
C.A. No.: 2012-CP-23-4393

Dear Mr. Shearouse,

I represent George Jackson who had a PCR hearing before the Hon. D. Garrison Hill on June 18, 2013. Mr. Jackson is appealing from the decision of the court in this case. Enclosed please find a copy of the Notice of Appeal and Certificate of Service for same. Also enclosed you will find copies of the Order(s) under appeal. As this is a PCR case, I have not requested a transcript pending a review of the file by OID/Appellate Defense. Also, as this is a PCR case, no filing fee is enclosed.

Sincerely,



J. Falkner Wilkes

Karen Ratigan, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Fax: (803) 253-6283

Paul B. Wickensimer, Clerk
Courthouse
305 E North St
Greenville, SC 29601-2121
Fax: (864) 467-8540

George Jackson, 302760
Livesay Correctional Institution
P.O. Box 580
Una, SC 29378

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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NOV 21 2013

APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
D. Garrison Hill, Circuit Court Judge

S.C. Supreme Court

Case No. 2012-CP-23-4393

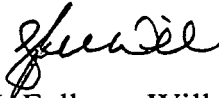
George Jackson, 302760, Appellant,
v.
State of South Carolina, Respondent.

NOTICE OF APPEAL

George Jackson, hereby appeals from the Judgment In a Civil Case (a Post Conviction Relief Action) signed and entered on August 21, 2013. A timely post trial motion was served and filed on August 30, 2013. Appellant further appeals from the Order denying Rule 59 relief signed and entered on October 16, 2013, mailed by the Clerk on October 17, 2013 (see envelope of mailing) and received by the Appellant on October 18, 2013. Both Orders were signed by the Hon. D. Garrison Hill, Circuit Judge.

A copy of the Judgement/Order(s) from which appeal is taken are provided herewith and incorporated herein.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

November 18, 2013.

Other counsel of record:

Karen Ratigan, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
D. Garrison Hill, Circuit Court Judge

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NOV 21 2013

S.C. Supreme Court

Case No. 2012-CP-23-4393

George Jackson, 302760, Appellant,

v.

State of South Carolina, Respondent.

CERTIFICATE


I certify that on November 18, 2013, I served the Appellant's Notice of Appeal on the Respondent and others by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below, and by facsimile:

Karen Ratigan, Assistant Attorney General
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Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
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(864) 271-6035 (facsimile)

Counsel for Appellant

November 18, 2013.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2304393

2013 AUG 21 PM 3:09
FRED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

George Jackson vs. South Carolina State Of

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):**
SCRC (Vol. Nonsuit); Rule 12(b), SCRC; Rule 41(a),
 Rule 43(k), SCRC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Rule 40(j) SCRC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this 21st day of August, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 21st day of August, 2013, and a copy mailed first class this 21st day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J. Falkner Wilkes 114 Whitsett St. Greenville, SC
29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 George D. Jackson,)
 S.C.D.C. No. 302760,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-4393

FINAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE, S.C.
 PAUL B. WICKENS

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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 6, 2012. The Respondent made its Return and Motion to Dismiss dated February 15, 2013. This hearing was held on June 18, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Jeffrey Falkner Wilkes, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf. Also testifying were assistant solicitor Kayce McCall, Esquire and the Applicant's plea counsel, James H. Price, III, Esquire. The Court had before it: (1) the Greenville County Clerk of Court records, (2) the Applicant's South Carolina Department of Corrections records, (3) the PCR application, (4) the return and motion to dismiss, (5) the records from the prior appeal, PCR, and federal habeas actions, and (6) Exhibits 1-5.

I.

The Applicant was indicted at the October 2003 term of the Greenville County Grand Jury for two (2) counts of trafficking cocaine (2003-GS-23-7212, -7216). He was represented by

James H. Price, III, Esquire.

On June 15, 2004, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen (15) years on each count.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant indicated he wanted to withdraw his appeal. The Court of Appeals issued an order dismissing the appeal on August 16, 2005 and the remittitur was issued on August 26, 2005.

2005-CP-23-7170

The Applicant filed a PCR application on November 7, 2005 (2005-CP-23-7170). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to "request the proficiency test and SLED certification" of chemist.
 - b. Failed to obtain Brady material.
2. Erroneous sentencing.
3. Lack of subject matter jurisdiction.

An evidentiary hearing was convened on April 18, 2006 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable James E. Lockemy denied the PCR application by order filed May 19, 2006.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court denied the petition for writ of certiorari on March 6, 2008.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (4:08-2340-CMC-TER). The Respondent submitted a motion for summary judgment on September 26, 2008. The Honorable Thomas E. Rogers, III, United

States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 27, 2009. On August 19, 2009, the Honorable Cameron M. Currie, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.


II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. “Violation of Brady and other relevant cases pertaining to the discovery and disclosure of information by the State to the defense.”
 - a. “The Applicant has discovered within the last year information that he believes shows the State failed to disclose information or material that it had a duty to provide to the Applicant prior to his guilty plea and that the duty to disclose is a continuing duty such that discovery of this information gives rise to a cause of action. Applicant has discovered that while the Applicant’s case was pending the confidential informant in his case had multiple arrests. That the Applicant was not made aware of this information nor of any deals or agreements between the State and the confidential informant that would have been relevant to the defense of the Applicant’s case and his decision as to whether he should go to trial or waive his rights and enter a guilty plea. Had the information discovered been revealed by the State and made known to the Applicant prior to his plea, the Applicant would not have waived his rights under the Fifth and Sixth Amendments and pled guilty. Had the State further disclosed this information prior to the expiration of time for the initial PCR case, the Applicant could have included that information and claim in his initial PCR case.”

III.

This Court finds this matter should be dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads



as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

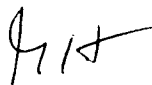
The Applicant pled guilty to the offenses he challenges in this application on June 15, 2004 and the South Carolina Court of Appeals issued the remittitur (after he withdrew his appeal) on August 26, 2005. The Applicant was therefore required to file his application before August 26, 2006. This application was filed on July 6, 2012, which was more than five years after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

The Applicant argues there is after-discovered evidence in his case. The Applicant argues that, within the last year, he has discovered the State did not disclose information about a confidential informant. The Applicant testified, however, that he knew the identity of the informant by the time of his first PCR hearing. The Applicant testified he recently discovered the confidential informant had "prior arrests" and that he "probably" would have gone to trial if he had known this information.¹ Plea counsel testified they knew the identity of the confidential informant at the time of the guilty plea hearing because he received the informant's statement in

¹ At the PCR hearing, the Applicant introduced into evidence three indictments that were in the confidential informant's name and issued on charges incurred after the underlying transaction in this case. (Applicant's Exhibits 3-5).



the discovery materials. Plea counsel testified the identity of the confidential informant was not an issue but that he did not recall receiving any information that the informant had been arrested.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)) (emphasis added).

This Court finds the Applicant failed to meet his burden of proving the information about the confidential informant's arrests constituted after-discovered evidence. The Applicant gave a confession in this case and was recorded engaging in a drug transaction. Further, the issue of whether the confidential informant was arrested after his participation in this case is not material to the issue of the Applicant's guilt or innocence. Based upon the foregoing, the Applicant has failed to meet all five parts of the Hayden test for proving after-discovered evidence. See id.; see also State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

VI.

The Applicant argues there was a Brady² violation in his case because the solicitor's office should have turned over – in the discovery materials – information about the confidential informant's pending charges. Plea counsel testified that part of his discovery motion to the State included a request for information regarding impeachment witnesses. Plea counsel testified it

² Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

git

was possible that having information about the confidential informant's charges may have assisted with plea negotiations. Plea counsel admitted, however, that negotiations in this case would have been difficult anyway because of the Applicant's confession.

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). "A Brady violation is material when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial." Id. at 525, 514 S.E.2d at 325; see also Riddle v. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70, 73 (2006) ("Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed.").

JK This Court finds that, while plea counsel filed skillfully drafted discovery requests that ~~may have~~ required the State to disclose the confidential informant's pending charges, the Applicant has failed to meet his burden of proving the existence of a Brady violation that prejudiced his case. The credible evidence indicates the incident dates for the confidential informant's three pending charges were after the Applicant's drug transactions in this case. This information consequently had diminished relevance to the confidential informant's credibility. Further, this information was not material to the issue of the Applicant's guilt or punishment, especially in light of the audiotape of the drug transaction and the Applicant's confession. The information about the confidential informant's record and pending charges, therefore, cannot

have been material under Brady because there was no reasonable probability the result of the Applicant's case would have been different if it had been disclosed. See Riddle v. Ozmint, 369 S.C. at 44-45, 631 S.E.2d at 73.

VII.

Accordingly, this Court finds the Applicant has failed to meet his burden of proving he is entitled to post-conviction relief. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."). Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of AUG., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2304393

*see 10/22/13
SC
code for*

George Jackson vs. South Carolina State Of

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GREENVILLE CO. SC
PAUL B. WICKENSIMER

CHECK ONE:

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SCRPC (Vol. Nonsuit); Rule 12(b), SCRPC; Rule 41(a),
 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: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

The Plaintiffs Motion Rule 59(e) is respectfully denied.

Dated at Greenville, South Carolina, this 16th day of October, 2013.

Court Reporter:

Garrison Hill

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 16th day of October, 2013, and a copy mailed first class this 16th day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J. Falkner Wilkes 114 Whitsett St. Greenville, SC
29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

AFTER FIVE DAYS RETURN TO

PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

J. Falkner Wilkes
114 Whitsett St.
Greenville, SC 29601



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