

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

James F. Russell, #320488,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) THE THIRTEENTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-23-4075

FINAL ORDER OF DISMISSAL

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SC Court of Appeals

FILED: 25MAR2025 11:11  
COC JAY GRESHAM CLERK SC

This matter comes before this Court by way of a post-conviction relief (PCR) action filed by James F. Russell (Applicant), on August 9, 2023. Respondent, the State of South Carolina, made its return and moved to summarily dismiss this application as untimely and successive to Applicant's previous application, 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 July 22, 2025, 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. Attached to this Final Order and incorporated herein by reference is an affidavit of service indicating Applicant was served the Conditional Order of Dismissal on August 20, 2025. On August 26, 2025, Applicant filed a Response to the Conditional Order of Dismissal with the Clerk of Court. This Court finds Applicant has failed to set forth any valid basis for an evidentiary hearing. In his response, Applicant argues that (1) Defendant was incompetent to stand trial (2) the court lacked subject matter jurisdiction to try and convict and sentence defendant (3) newly discovered evidence (4) error in application of 17-23-175 and (5) failure to prove elements of

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indictment. Although Applicant alleges newly-discovered evidence, his allegations of newly-discovered evidence are insufficient to warrant a hearing on this issue. See Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (“A party requesting a new trial based on after-discovered evidence must show that the 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.”). Applicant attaches several documents to his response that were documents available prior to his trial and first PCR action. Applicant raises no new claim and simply restates his argument in his application, alleging newly discovered evidence which this Court has had the opportunity to review.

This Court has reviewed its prior Conditional Order and finds Applicant has failed to show cause as to why the Order should not become final. Applicant has presented no specific factual or legal reasons on the timeliness of the issue. Applicant was sentenced on March 7, 2007, the Remittitur to the lower court on June 4, 2009. As such, a timely application should have been filed on or before June 4, 2010. This application was not filed until August 9, 2023, well beyond the statutory filing period. Applicant did not provide a “sufficient reason” why his current grounds for relief were not raised in his previous PCR application. See Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 393 (1991) (Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.”).

After a review of Applicant's filing, this Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, successive to Applicant's previous PCR applications, 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

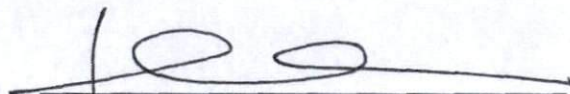
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an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such 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.

**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 that 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 26 day of February, 2026.

  
JESSICA ANN SALVINI  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

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