

THE STATE OF SOUTH CAROLINA **RECEIVED**  
IN THE SUPREME COURT

MAY 29 2026

APPEAL FROM GREENVILLE COUNTY S.C. SUPREME COURT  
COURT OF COMMON PLEAS

HONORABLE JESSICA A. SALVINI

APPELLATE CASE NO. 2026-001036

JAMES F. RUSSELL #320488 \_\_\_\_\_ APPELLANT

V.

THE STATE OF SOUTH CAROLINA \_\_\_\_\_ RESPONDENT

PURSUANT TO RULE 243(C) AND 267 THIS COURTS  
ORDER WAS RECEIVED BY ME ON MAY 6, 2026.

THE LOWER COURT COULD NOT DISMISS THIS PCR  
BECAUSE I RAISED THE LOWER COURTS LACK OF SU-  
BJECT MATTER JURISDICTION TO TRY AN INCOM-  
PETENT DEFENDANT AND SUBJECT MATTER CAN BE  
RAISED ANY TIME EVEN FOR THE 1ST TIME ON APPEAL.  
(SEE 2026 WL 1314472 AND EXHIBITS A B AND C  
FOR CONTINUED LEGAL AUTHORITIES IN SUPPORT AND  
EXHIBITS D AND E IN SUPPORT OF INCOMPETENCE TO  
STAND TRIAL)

PROOF OF SERVICE

I SERVED A COPY OF THIS DOCUMENT ON THE OFFICE OF  
ATTORNEY GENERAL ADDRESSED P. O. BOX 11549, COL-  
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2026

s/ James Russell

CTEVISU

MA **Curtis D. Richardson**  
#269166

**Tyger River Correctional Institution**  
200 Prison Road  
Enoree, SC 29335

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MAY 29 2026

S.C. SUPREME COURT

A

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
2023-CP-23-04075

JAMES F. RUSSELL

APPLICATION FOR  
POST-CONVICTION RELIEF

v.  
STATE OF SOUTH CAROLINA

JUN 26 AM 10:48  
JAY GRESHAM CJC 091 SC

PURSUANT TO S.C. CODE ANN. 17-27-70(B) AND FOR ALL THE REASONS SET OUT BELOW, THIS COURT SHOULD NOT DISMISS THIS APPLICATION FOR POST-CONVICTION RELIEF FOR THESE SPECIFIC FACTUAL AND LEGAL REASONS:

- (1) DEFENDANT WAS INCOMPETENT TO STAND TRIAL
- (2) THE COURT LACKED JURISDICTION TO TRY AND CONVICT AND SENTENCE DEFENDANT
- (3) NEWLY DISCOVERED EVIDENCE
- (4) ERROR IN APPLICATION OF 17-23-175
- (5) FAILURE TO PROVE ELEMENTS OF INDICTMENT

ARGUMENT (1)

THIS DEFENDANT AT BAR WAS PROPERLY DIAGNOSED AS NOT COMPETENT TO STAND TRIAL AND THEREFORE SHOULD HAVE NEVER BEEN TRIED CONVICTED OR SENTENCED. (SEE EXHIBIT #1). ATTACHED

ATTORNEY GENERAL'S OFFICE

RECEIVED 9/5/75

ADMINISTRATIVE INSTRUCTIONS

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B

THE SOUTH CAROLINA SUPREME COURT IN HALL V. S.C.D.C. HELD 601 SE2D 335 (APRIL 2005) [6]  
"CONVICTION OF A CRIMINAL DEFENDANT WHO IS NOT COMPETENT TO STAND TRIAL VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT"

THE DEFENDANT AT BAR WAS NOT AFFORDED A COMPETENCY HEARING. THE UNITED STATES SUPREME COURT IN PATE V. ROBINSON 86 SCT 836 (MARCH 1996) RULED "UPON DETERMINATION THAT ACCUSED'S CONSTITUTIONAL RIGHTS WERE ABRIDGED BY HIS FAILURE TO RECEIVE ADEQUATE HEARING ON HIS COMPETENCE TO STAND TRIAL A WRIT OF HABEAS CORPUS MUST ISSUE AND ACCUSED MUST BE DISCHARGED, UNLESS GIVEN NEW TRIAL WITHIN REASONABLE TIME U.S.C.A. CONST AMEND. 14"

### ARGUMENT (2)

BASED ON ARGUMENT (1), THE TRIAL COURT LACKED JURISDICTION TO TRY OR SENTENCE DEFENDANT. IN ARBUGH V. MOONLIGHT CAFE 126 SCT 1235, THE U.S. SUPREME COURT HELD "SUBJECT MATTER JURISDICTION CAN NEVER BE WAIVED"

### ARGUMENT (3)

ARGUMENTS (1) AND ARGUMENT (2) ARE RAISED BASED ON NEWLY DISCOVERED EVIDENCE AND)

C

THEREFORE COULD NOT AND WERE NOT RAISED PRIORLY BECAUSE I DID NOT SUBMIT ANY PLEADINGS TO ANY COURT ON BEHALF OF THIS CASE OR RESEARCH THIS CASE UNTIL 8/1/2025 SOME TWENTY PLUS YEARS AFTER THIS CONVICTION

#### ARGUMENT (4)

17-23-175 WAS NOT ENACTED UNTIL JULY OF 2006. DEFENDANT'S DATE OF OFFENSE IS JULY 10 2005 AND AS SUCH WAS LEGALLY INAPPLICABLE IN THIS CASE (SEE STATES ADMISSION ON PAGE 31 OF TRANSCRIPT, ATTACHED.)

#### ARGUMENT (5)

NEW CHANGE IN LAW MUST BE APPLIED TO THIS CASE. WHERE DATE IS MATERIAL ELEMENT OF OFFENSE, STRICT COMMON LAW PRACTICE REQUIRES INDICTMENT TO ALLEGE DAY OF MONTH AND YEAR WHEN OFFENSE WAS COMMITTED. CODE 1976, 16-3-655, 17-19-20, STATE V. THOMPSON 409 SE2D 420. THE STATE FAIL TO PROVE DEFENDANT COMMITTED ANY OFFENSE ALLEGED VIA INDICTMENT ON SAID DATE. UNDER NEW CHANGE IN LAW SEE STATE V. DENT 2025 WL 1947806 THE SOUTH CAROLINA SUPREME COURT HELD "VARIANCE BETWEEN THE PROOF AT TRIAL REGARDING SEXUAL BATTERY AND INDICTMENT AND AS SUCH DEFENDANT'S CONVICTION FOR CSCM COULD NOT STAND."

DRAFTED BY CURTIS RICHARDSON  
FOR S/ James Russell  
JAMES RUSSELL

THE SOUTH CAROLINA SUPREME COURT IN HALL  
V. S.C.D.C HELD 601 SE2D 335 (APRIL 2005) [6]

"CONVICTION OF A CRIMINAL DEFENDANT WHO IS NOT CO-  
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BASED ON NEWLY DISCOVERED EVIDENCE AND)

### Analysis Of Test Data

Due to Mr. Russell's limited verbal skills, poor reading skills, and his inability to relate to abstract concept formations, standardized and projective psychometric testing was substantially limited. He was capable, however, of completing the Bender Gestalt Reproductions Test. A review of the results reveals minimal evidence of organicity and/or psychomotor coordination problems. Mr. Russell was given all nine plate designs of which he was capable of reproducing accurately. He was also given the immediate recall section of this test and once again was capable of reproducing eight of the plate designs accurately and in the exact original presentation order. These results suggest an excellent immediate memory recall potential and substantially better than average eye/hand coordination skills. Of interest, it was noted that during this test, Mr. Russell did not manifest any symptoms of impulse control disorder, but rather, payed specific attention to detail which is required to complete the test successfully. There was no evidence of plate design rotation, distortion of symbols, or contamination of boundaries. Instead, Mr. Russell attended to this exercise with a patient and cooperative demeanor. After he completed the plate designs, he would continually look to this clinician for what appeared to be positive recognition and acceptance.

### Conclusions

It is this clinician's opinion that Mr. Russell impresses as a young man who has suffered from chronic frustration and anxiety secondary to his hearing and speech impairments. His limited ability to adequately and efficiently interact with his environment as a result of these limitations, has consequently resulted in a deficient ability to successfully compete in the educational, vocational and social aspects of modern day living. These deficiencies in conjunction with a recurrent substance abuse disorder have also contributed further to his primitive, impulsive and socially inappropriate behavior in problem solving, decision making and living in an independent fashion. His inability to gain positive acceptance and recognition from others within his peer group has contributed to his feelings of social displacement, rejection and a lack of trust for others within his same age range.

As a result of the above personality dynamics, Mr. Russell's primary defense mechanism utilized to preserve the integrity of his self concept is to regress to a younger social age group which is more acceptant and withwhom he can feel equal without the fear of rejection.

EXHIBIT #1 (A)

- 6 -

Based upon this subject's responses to critical competency related questions, it is this clinician's professional opinion that Mr. Russell is not competent to stand trial at this time. Secondly, although it is a legal decision, it is my opinion that he was not criminally responsible at the time the alleged sexual assaults occurred.

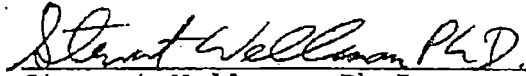
Finally, based upon the findings of this evaluation, it is my further opinion that Mr. Russell's mental status was the same on the days of the alleged offenses as it appears to be at the time of this report.

Respectfully submitted by:

Reviewed by:



Allan D. Pass, Ph.D.  
Director



Stewart Wellman, Ph.D.  
Psychological Consultant

/jp

cc: File

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Respectfully submitted by:



Allan D. Pass, Ph.D.  
Director

Reviewed by:



Stewart Wellman, Ph.D.  
Psychological Consultant

/jp

cc: File

The Supreme Court of South Carolina

PATRICIA A. HOWARD, CLERK OF COURT

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TYGER RIVER MAILROOM

JAMES F. RUSSELL, 00320488  
TYGER RIVER CORRECTIONAL INSTITUTION  
UPPER YARD  
200 PRISON ROAD  
ENOREE, SC 29335-9308

LEA  
2117

29335-279899





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

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 \_\_\_\_\_ day of \_\_\_\_\_, 2026.

---

JESSICA ANN SALVINI  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.

MAY 29 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 James F. Russell #320488, )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 )  
 )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

ORDER REGARDING  
MOTION TO RECONSIDER

ENTERED COMPUTER

FILED: 76APR23PM4:29  
CJC JAY GRESHAM GUL SC

Case No.: 2023CP2304075

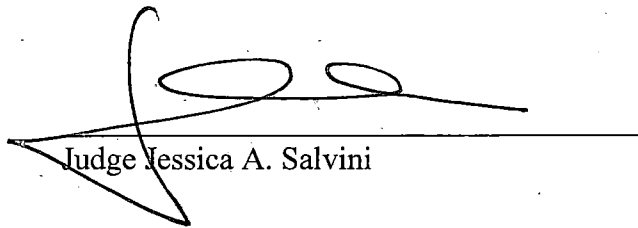
A Motion Under Rule 59 and 60 of this Court's Final Orde of Dismissal (Reconsideration) has been received, filed with the Court on March 25, 2026. Pursuant to Rule 59(f), SCRPC, the Court, in its discretion, may decide the motion based on briefs without oral argument.

After careful consideration of the filings and review of the record, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRPC, is respectfully DENIED.

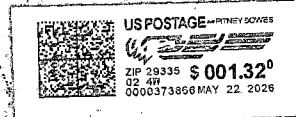
IT IS SO ORDERED.

4/22, 2026  
Greenville, SC



\_\_\_\_\_  
Judge Jessica A. Salvini

JAMES RUSSELL  
320488 U6  
200 PRISON RD  
ENOREE, S.C  
29335



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