

RECEIVED

FEB 26 2014

S.C. SUPREME COURT

February 13, 2014

The Honorable Daniel E. Shearouse, Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re : Darrell L. Goss vs. State of South Carolina
Case No : 2012-CP-10-3185

Dear Mr. Shearouse :

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, Order Denying Motion to Alter or Amend Judgment, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact me at the address stated below.

With kind regards, I am

Sincerely,
Darrell L. Goss

Darrell L. Goss #305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Roger M. Young, Sr., Circuit Court Judge

Case No : 2012-CP-10-3185

Darrell L. Goss Appellant
S.C.D.C. 305517

v.

The State Respondent

NOTICE OF APPEAL

Darrell L. Goss appeals his Denial for Post Conviction Relief in this case . The order of Dismissal was signed by the Honorable Roger M. Young, Sr., November 4, 2013, filed November 6, 2013, which I, Darrell L. Goss, received on November 12, 2013 . A Motion to Alter or Amend Judgment was filed November 20, 2013 . The order denying Mr. Goss ' Motion to Alter or Amend was signed, January 31, 2014 , and

filed February 4, 2014, which I, Darrell L. Goss, received on February 10, 2014.

Other Counsel on Record :
Ashleigh R. Wilson, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

Darrell L. Goss

Darrell L. Goss # 305517
Lieber Correctional Inst.
Post Office Box 205
Ridgeville, SC 29472

Appellant, Pro Se

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Roger M. Young, Sr., Circuit Court Judge

Case No : 2012-CP-10-3185

Darrell L. Goss Appellant
S.C.D.C. 305517

v.

The State Respondent

CERTIFICATE OF SERVICE

I, Darrell L. Goss, do hereby certify that on this 13th day of February, 2014, I served the foregoing Notice of Appeal, Order of Dismissal, Order Denying Motion to Alter or Amend Judgment, as well as Certificate of Service in this matter by depositing a true copy of the same in the United States Mail, postage prepaid, addressed to the following as indicated below.

South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Office of Attorney General
Attn : Ashleigh R. Wilson, Esq.
Post Office Box 11549
Columbia, SC 29211 - 1549

Darrell L. Goss

Darrell L. Goss #305517
Lieber Correctional Inst.
Post Office Box 205
Ridgeville, SC 29472

February 13, 2014
Ridgeville, SC

Cc
AG
AT
ES
Sa

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)
)
Darrell L. Goss, #305517,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-10-3185

FINAL ORDER OF DISMISSAL


FILED
2012 MAY -6 11:20
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 15, 2012. The Respondent (the State) made its Return and Motion to Dismiss on October 11, 2012, requesting that the Application be summarily dismissed. 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 dated October 1, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

In a document captioned "Opposition and Reply to the Respondent's Motion to Dismiss and Conditional Order" and dated October 11, 2012 the Applicant argues the following:

1. The Applicant states he was prevented from filing his application for post-conviction relief because of his mental incompetency and cites Ferguson v. State.¹
2. He has a history of mental illness due to his attention deficit disorder and low IQ.
3. He regained his competency on September 16, 2011 and filed his application within one year of that date.

¹ 382 S.C. 615, 677 S.E.2d 600 (2009).

1


4. *The Applicant also attached Progress Notes from the Medical University of South Carolina dated December 11, 1996 and January 27, 1998.

This Court finds the Applicant has failed to demonstrate his failure to timely file this application for post-conviction relief was due to mental incompetency. In Ferguson v. State, the South Carolina Supreme Court held that in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute should be tolled. 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009).

This Court finds the Applicant has failed to establish that he was mentally incompetent from October 20, 2004 (the date of his 2004 guilty plea) until September 16, 2011. First, the record reflects on February 20-26, 2009, the Applicant was deemed competent to proceed to trial and be convicted of armed robbery (2007-GS-10-10805), assault and battery with intent to kill (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). Nothing in the transcript of the Applicant's trial indicates he was mentally incompetent in 2009- five years after the Applicant's 2004 guilty plea. Second, the record reflects the Applicant's mental incompetence did not prevent him filing an application for post-conviction relief on his 2009 convictions on May 27, 2011. The evidentiary hearing for his 2011 application for post-conviction relief was held on September 16, 2011, which coincidentally was the same day the Applicant claims he regained his competency to file his current application. The appeal of his 2011 application is pending.

This Court since finds it is clear from the Applicant's case history that the Applicant's alleged mental incompetency did not prevent him from going to trial and filing a PCR application on his 2009 charges, it is unlikely the Applicant's alleged mental incompetency prevented him from filing his current application on the Applicant's 2004 charges.



This Court finds further the documentation provided by the Applicant to support his claim of mental incompetency is insufficient. The documents provided by the Applicant discuss the Applicant's diagnosis for Attention Deficit Disorder (ADD) at 10 years old and do not make any reference to the Applicant's mental health during the time he claims he was incompetent and was precluded from filing this post-conviction relief application. This Court finds these documents fail to show the Applicant was unable to understand the nature of post-conviction relief proceedings and was unable to communicate with counsel. See Singleton v. State, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). This Court finds an evidentiary hearing on this matter is not warranted.

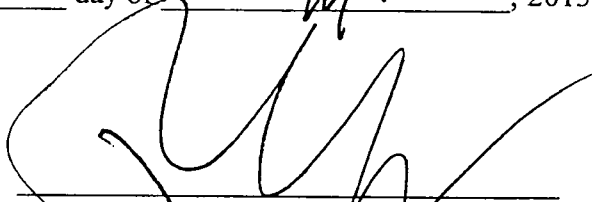
This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, the Applicant's 2009 trial transcript, and documents from his prior PCR and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. The Applicant has shown no reason for his failure to file this application for post-conviction relief within one-year of his 2004 conviction. This Court finds the Applicant's assertion that his mental incompetence prevented the timely filing of this application is wholly without merit. 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 PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

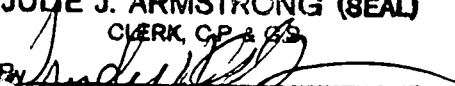


AND IT IS SO ORDERED this _____ day of M4 , 2013.



The Honorable Roger M. Young
Administrative Judge
9th Judicial Circuit

 Chap , South Carolina.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP & CS

DEPUTY CLERK

CC
AT
AG

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No.: 2012-CP-10-3185

Darrell L. Goss, #305517,)
)
Plaintiff,)

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

vs.)

State of South Carolina,)
)
Defendant.)

This matter came before this Court upon Applicant Darrell L. Goss's Motion to Alter or Amend this Court's Final Order of Dismissal dated November 6, 2013.

Standard of Review

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

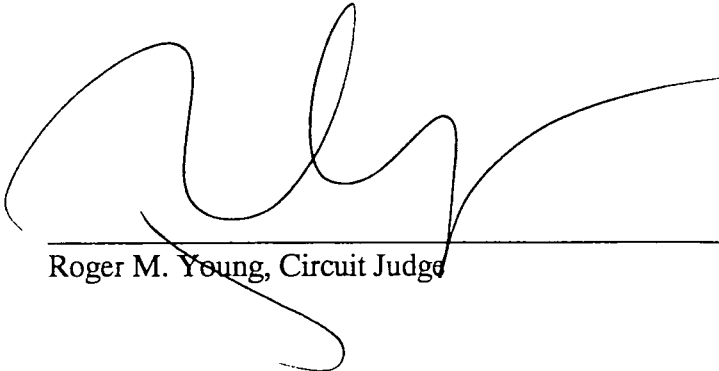
Conclusion

I have considered the arguments, supporting and opposing documents, and based on same DENY Applicant's Motion to Alter or Amend this Court's Final Order of Dismissal.

2014 FEB -4 PM 3:18
JULIE A. FERGUSON
CLERK OF COURT
FILED

IT IS SO ORDERED!

January 31, 2014
Charleston, South Carolina



Roger M. Young, Circuit Judge

Darrell L. Goss #305517
Lieber Correctional Institution EA/51
Post Office Box 205
Ridgeville, SC 29472

AMS

RECEIVED
FEB 20 2014
MAIL ROOM
LIEBER C.I.

South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

FOR LEGAL USE ONLY