

Dear, Clerk 1

March, 10th 2014

Case# 2012-CP-12-0184

Please File this Appeal along with all the documents and Send me Filed Clock Stamped Copies, also Could you Send me an application to the Division of Appellate Defense because I would like to get a lawyer From thier office to help with my appeal, because Judge Newman has abused his discretion 100%.

Thank you.

James B. Curry #186237
Prose,

P.S. the transcript of the proceeding will Prove my Appeal 100%.

RECEIVED

MAR 13 2014

SC Court of Appeals

LEGAL MAIL ONLY

The State of South Carolina
in The Court of Appeals.

RECEIVED

MAR 13 2014

SC Court of Appeals

Appeal From Chester County
Court of Common Pleas.

Clifton B. Newman Circuit Court Judge,
Brooks P. Goldsmith Circuit Court Judge.

Case# 2007-GS-12-529-530-531-532

The State of South Carolina

Respondent,

Vs.

James B. Curry

Appellant,

Notice of Appeal.

James B. Curry appeals his Convictions and Sentence in this Case the Sentence was imposed by the Honorable Brooks P. Goldsmith on Feb, 14th, 2008. This appeal is taken From the Order of the Honorable Clifton B. Newman dated Dec, 19th 2013 and Feb, 21st, 2014 on the grounds of abuse of discretion For Violation of discovery Sanctions and 16-9-10 perjury within the Order of Dismissal and Failure to Alter or Amend the Judgment. Date, March 10th, 2014

James B. Curry #186737
Lee C. Kershaw 1125
990 wisacky Hwy.
Bishopville S.C 29010
pro-se,

The State of South Carolina
in The Court of Common Pleas.

Case# 2012-cp-12-0184

Clifton B. Newman Circuit Court Judge.

Brooks P. Goldsmith Circuit Court Judge.

The State of South Carolina,

Respondent,

Vs.

James B. Curry

Appellant,

Proof of Service.

I certify that I have served Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail postage prepaid on March 10th, 2014 addressed to Suzanne H. White assistant deputy attorney General
Po. Bx. 11549 Columbia S.C 29211.

Date, March, 10th, 2014

James B. Curry #186137
Lee C.I. Kershaw 1125
990 Wisacky Hwy.
Bishopville S.C 29010

Pro-se,

Statement of Issues on Appeal. Case# 2012-CP-12-0184
RE: abuse of discretion.

- #1. Whether the court erred by ruling that appellants application should be dismissed for failure to comply with the filing procedures as outlined in the Uniform Post-Conviction Act S.C. Code Ann. § 17-27-10 to 160 in that: The applicant met the Acts exception to the general one-year statute of limitations by presenting newly discovered evidence not previously presented and heard that requires vacation of the conviction or sentence and the application was filed under this Chapter within one-year after the date of actual discovery. This exception is commonly known as the discovery rule.
- #2. Whether the court erred by ruling that the application should be dismissed because it is successive to the previous P.C.R. application in that: The applicant provided a "sufficient" reason for why the grounds were not asserted in the original application. (could not have been raised.) S.C. Code Ann. 17-27-90
- #3. Whether the court erred by violating S.C. Code Ann. § 17-27-80 (2003) and Rule 52(a) S.C.R.P. in that: The court states that the applicant testified that Mr. Ford was murdered two months after the letter was written.
- #4. Whether the court erred by ruling that the death of Lamario Ford makes any such evidence inadmissible due to lack of authentication as his testimony is silenced by death: appellant presented to the court certified copies showing that the original document had been filed in the clerks office prior to the hearing which under Rule #902 S.C.R.P. is "Self-Authentication" Thus appellants proffered evidence was admissible under Rule #804 S.C.R.P. Unavailability of the witness because of death. Hearsay exceptions.

State of South Carolina
County of Chester.

James B. Curry
Applicant,

Vs.

State of South Carolina
Respondent,

In the Court of Common Pleas
Sixth Judicial Circuit
Case# 2013-CP-12-0184

Motion to Alter or Amend
Order of Dismissal

FILED
2013 JAN - 2 P 2:44
CLERK OF COURT
CHESTER CO S.C.

CLERK OF COURT
OFFICE
SC
Jan 2, 2014
11:44 PM A.M. P.M.
Suz H. Carpenter
Clerk of Court

Applicant, James B. Curry by and through his self representation, files this Motion to Alter or Amend the Order of Dismissal Filed on Dec, 23, 2013, pursuant to South Carolina Rule of Civil Procedure 59(e).

Applicant, James B. Curry moves for an amendment to the Order of Dismissal Filed on Dec, 23, 2013 such that the Order of Dismissal conforms to the proposed order submitted to the presiding Judge on behalf of Applicant Curry on Dec, 2nd 2013, on the grounds of abuse of discretion.

#1. False Statement within the order, Motion/objection Filed Dec, 10, 2013 in that: The Applicant testified that Mr. Ford was murdered two months after the letter was written Page#6 100% not testified to by the Applicant in which the record will conclusively prove.

Wherefore, Applicant Curry moves the Court for an amendment to the Order of Dismissal in this case.

This the 30th day of December, 2013.

Respectfully Submitted,
James B. Curry

Suzanne Newman

State of South Carolina
County of Chester.

In the Court of Common Pleas,
Sixth Judicial Circuit
Case# 2012-CP-12-0184

James B. Curry
Applicant,

Motion/Objection.

V.

To perjury or False Statement.

State of South Carolina
Respondent,

FILED
2013 DEC 10 P 11:10
CLERK OF COURT
CHESTER CO S.C.

Dear, Judge Newman on November 27th, 2013 assistant Deputy Attorney General Suzanne H. White respondent for the State submitted a Proposed Order to the Court, I James B. Curry pro-se hereby request that this Court do not sign respondents proposed Order because of perjury or False Statement within the above said respondents proposed Order.

Finding of Fact:

#1. On page #6 respondent states applicant testified that Mr. Ford was murdered two months after the letter was written. This statement was 100% not testified to by the applicant in fact applicant submitted a Death Notice to the Court showing that Mr. Ford died on March 31st, 2009 in which the record will conclusively prove, because of this corrupt act committed by the respondent the applicant once again request that this Court sign applicants proposed order submitted to the Court on Dec, 2nd, 2013 requesting a New Trial, based on after discovered evidence.

CC:
Judge Newman

Respectfully Submitted
James B. Curry
Prose.
Dec, 2nd 2013

State of South Carolina) In the Court of Common Pleas
County of Chester) Sixth Judicial Circuit
Case # 2012-CP-12-0184

RECEIVED

MAR 13 2014

SC Court of Appeals

Motion to Alter or Amend

Order of Dismissal

CLERK OF COURT OFFICE

CHESTER, S.C.

DATE: Jan. 6, 2014

11:50 A.M. A.M. P.M.

Shelley Carpenter
Clerk of Court

FILED

2013 JAN - 6 A 11:50

CLERK OF COURT
CHESTER, S.C.

ERROR

James B. Curry
Applicant,

Vs.

State of South Carolina
Respondent,

Applicant, James B. Curry by and through his self representation, files this motion to Alter or Amend the Order of Dismissal Filed on Dec, 23, 2013, pursuant to South Carolina Rule of Civil procedure 59(e).

|||

Applicant, James B. Curry moves for an amendment to the Order of Dismissal Filed on Dec, 23, 2013 such that the Order of Dismissal conforms to the proposed order submitted to the presiding Judge on behalf of Applicant, Curry on Dec, 2nd 2013 on the grounds of abuse of discretion.

False Statement.

#2. authentication & admissibility, Motion Filed on Dec, 6, 2013 in that the Court states the death of Lamario Ford makes any such evidence inadmissible due to lack of authentication as the testimony is silenced by death.

Wherefore, Applicant Curry moves the Court for an amendment to the Order of Dismissal in this case

C. Judge Lewman

This 30th day of December, 2013.

Respectfully Submitted.
James B. Curry

burden of proof as to establishing a claim of newly discovered evidence sufficient to overcome the statute of limitations and law against successive applications. I find that this evidence would not likely affect the outcome of a trial if another were to be held, as the death of Lamario Ford makes any such evidence inadmissible due to lack of authentication as his testimony is silenced by death. Therefore, this application is denied and dismissed.

CONCLUSION

In consideration of the foregoing, I find and conclude that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to the assistance of appellate counsel in seeking review of the denial of PCR. Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. South Carolina Appellate Court Rule 243 provides appropriate procedures for appeal.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

James B. Curry,

Applicant,

- vs -

State of South Carolina,

Respondent,

2012-CP-12-0184

APPLICANT'S MOTION

IN SUPPORT OF PROPOSED ORDER

FILED
2013 DEC - 6 A 11:17
CLERK OF COURT
CHESTER CO

Applicant, James B. Curry, by and through his self representation submits this Motion in Support of Proposed Order, on December 2, 2013.

Applicant, James B. Curry, moves the Court and request that this Court does not sign the respondent's proposed Order, because respondent's only objection during the hearing on August 6, 2013, was on the issue of authenticity of applicant's proffered evidence to a confession letter applicant received, by mail, from Lamario Ford, confessing to the crime for which applicant was convicted.

Applicant proved authentication by submitting certified copies to the Court showing that the original document had been filed in the Clerk's Office prior to the hearing, under RULE 902, "Self-Authentication" and is satisfied by the evidence which is sufficient to support a finding that the matter in question is what it's proponent claims: "Thus evidence was admissible under RULE 804."

Applicant request that this Court review the transcripts of the proceedings to avoid an "onerous abuse of discretion" on appeal if respondent's proposed Order is signed.

APPLICANT FOREVER PRAYS

Respectfully Submitted,

James B. Curry #126737

James B. Curry #126737
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC. 29010

Date: Dec 2nd 2013

APPLICANT, PRO SE.

EXHIBIT

RULE #804 SCRE

HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE.

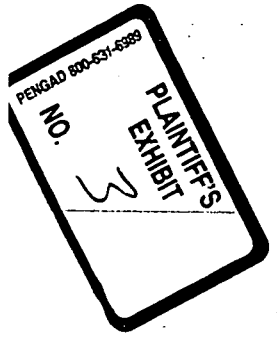
- (A) Definition of unavailability as a witness includes situations in which the declarant is unable to be present or testify at the hearing because of death.



FILED

2012 NOV -5 P 4:34

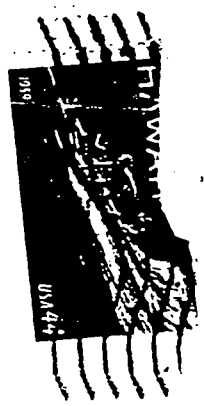
CLERK OF COURT
CHESTER COUNTY, S.C.



#1. Proof the confession letter could not by the exercise of due diligence have been discovered before the trial, envelope received in Postmarked 2009, trial was Feb, 2008.

Mario Ford
Great Falls, S.C. 29055

C 292
2009 PM 11



James Bernard Curry
Lee Correction Inst.
Chesterfield's 2216
990 Wiscary Hwy
Bishoppe Ville, S.C.
Inmate # 186737

301011775

#2. The date of actual discovery by the Applicant was April, 24th, 2011 due to being lost within S.C.D.C.

Dear Bernard,

Hey Homie! How are you? This is Mario Ford I just want to apologize that you got arrested for the crime I committed on June 4th 2007 on Pine Street, I've changed and want to get my life right with god, and what I mean is that I'm willing to come testify and accept responsibility for my own actions. I'm sorry I didn't come forth sooner and I'm sorry you got charged for something that I did, I hate it went down the way it did cause you really had nothing to do with that incident sorry homie 4 real.

Peace

Mario Ford

FILED

2012 OCT 11 P 12:28

CLERK OF COURT
CHESTER COUNTY, S.C.

PLAINTIFF'S
EXHIBIT
NO. 3
PENGAD 153-000-DYANER

services for Mr. Everett Ernest Hite III will be conducted at 11 a.m. Saturday, April 4, at Oakland Baptist Church. Dr. Bob Shrum will officiate and burial will be private.

Mr. Hite, 58, died Monday, March 30, 2009.

Born in Sumter and formerly of Summerton, Great Falls and Spartanburg, he was a son of the late Rev. Everett Ernest Hite Jr. and Emily Harvin Hite Crier of Huntersville. A 1973 graduate of Clemson University, where he earned a bachelor of science in electrical and computer engineering, Mr. Hite was a licensed profes-

power, which had been his childhood goal. He was currently serving as engineering manager at the Catawba Nuclear Station. A nationally known authority on pre-1924 radio, Mr. Hite was an active member of the Carolinas Chapter of the Antique Wireless Association and belonged to Sons of the American Revolution and Oakland Baptist Church.

Survivors in addition to his mother include his wife, Susan Crowson Hite, a son, Everett Ernest Hite IV of Columbia, a daughter, Jamison Scarborough Hite

Summer, N.C., and two sisters, Susan Hite Pollak of Sherrills Ford, N.C. and Martha Ann Hite Seay of Cornelius, N.C.

The family will receive friends at Oakland Baptist Church immediately following the memorial service and other times at the home.

Memorial may be made to Oakland Baptist Church, 1067 Oakland Ave., Rock Hill, SC 29732. Condolences may be made online at www.greenefuneralhome.net.

Greene Funeral Home is in charge of arrangements.

Medicus, 314 Challis Court, conducted at 11 a.m. Friday, April 3, at Baptist Church. Dr. Robert Shrum officiate and burial in Forrest Hills in Rock Hill.

Mr. Dantzler, Wednesday, April 1, at Piedmont Center.

Born in Eutaw on Sept. 12, 1920, the late Elvin H. Eva Shingler, a graduate of C. County schools, N.C., was formerly th of Piggly Wiggly Falls. He was an Oakland Baptist and served in the during World War. Gen. Omar Br. Gen. George Pa. Battle of th

Mr. Lamario Demond 'Flip' Ford, 26

GREAT FALLS - The funeral for Mr. Lamario Demond "Flip" Ford of 5243 George Beard Ave. will be conducted at 2 p.m. Saturday, April 4, at Pleasant Grove A.M.E. Zion Church in Great Falls. The Rev. Randy Billy will officiate, the Rev. Paul Hicklin will deliver the eulogy and the Rev. Dianne Bowden will assist. Burial will follow in the church cemetery.

Mr. Ford, 26, died Tuesday, March 31, 2009.

Born in Chester County on Jan. 11, 1983, he was a son of Perry Ford and Cheryl Cunningham Ford. A member of Pleasant Grove A.M.E. Zion Church, Mr. Ford attended the public schools of Great Falls and was a former brick mason.

Survivors include four children, Jashawn Belk of



Ford

the home and Ja Tyler Caldwell, Mar'Kevious Ford and La'Unique Belk, all of Lancaster; his parents, Perry Ford and Cheryl Cunningham Ford, both of Great Falls; three brothers, Terencio Ford, Devlin Ford and Ja'Quaylan Ford, all of Great Falls; three sisters, Letita Rice and her husband, Peter, and Quantina Ford, all of Great Falls, and Tina Denise Belk of Camden, his maternal grandmother, Ethelrene Beaty of Great Falls; his

paternal grandmother, Mozell Ford of Great Falls; three aunts, Sandra Gladden and Debra Sims, both of Great Falls, and Gwen-dolyn Lowry and her husband, Gene, of Augusta, Ga.; three uncles, Ronald Cunningham of Rahway, N.J., Bernard Wilson of Great Falls and Lawrence Jamison of Greenville; five great-aunts; and one great-uncle.

Viewing will be from 3 to 7 p.m. today at King's Funeral Home, 2367 Douglas Road, Great Falls. The body will be placed in the church at 1 p.m. Saturday.

The family will receive friends at the residence, 5243 George Beard Ave., Great Falls.

King's Funeral Home of Great Falls is in charge of arrangements.

Mrs. Deborah B. 'Libby' Hinson, 57

CHESTER - The funeral for Mrs. Deborah B. "Libby" Hinson of 1296 Saluda Road will be conducted at 1 p.m. Saturday,

at the home of Mrs. Waddell Baker of Richburg and the late Bobby Baker. Mrs. Hinson attended the public schools of Great Falls. Survivors in addition to

Kershaw, a special niece, Betty Gladden of Chesnee, and a special friend, David Dreaman of Richburg.

The family will receive friends from 3 to 5 p.m.

CHESTER - services for M "Eddie" Cooke Road will be con p.m. Sunday, at Pleasant Grove Methodist Church and Gaston Park Richburg.



"Mor

Mary F. 4-4-1959-6 Happy B

R.I. Tiffany, Res. Jennette

State of South Carolina
County of Chester.

The Court of Common Pleas.
Sixth Judicial Circuit
Case # 2012-CP-0184

James B. Curry #186737

"P.C.R"

Applicant,

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Cases, The South Carolina

V.

MAR 13 2014

Supreme Court Reversed

SC Court of Appeals

Holding that the Statute of
limitations did not apply because
of the "discovery Rule".

State of South Carolina
Respondent,

In response to the respondents proposed Conditional order
Served Sept, 26th, 2012 these cases would show the court
that the Statute of limitations does not apply under the
"discovery Rule" and the Applicant is entitled to an
evidentiary hearing.

FILED
2012 OCT
CLERK OF COURT
CHESTER COUNTY, S.C.

- #1. Coats V. State, 352 S.C. 500, 575 S.E.2d 557 (S.C. 2003)
- #2. Barr V. City of Rock Hill, 500 S.E.2d 157 (S.C. App. (1998))

* Also attachments Submitted as follows...

- #1. Copy of the Confession letter.
- #2. Affidavit Stating Applicant discovered letter on April 24th 2011.
- #3. Current P.C.R application.

C: The Honorable Brooks P. Goldsmith

Respectfully Submitted,

James B. Curry
10-11-12

State of South Carolina
County of Chester.

James B. Curry
Applicant,

Vs.

State of South Carolina
Respondent,

In the Court of Common Pleas,
Sixth Judicial Circuit.
Case # 2012-CP-12-0184

Request to present
oral argument in RE:
to Motion to Alter or
Amend. 59.(e)

Applicant, James B. Curry by and through his Self Representation here by request that this Court allow oral arguments from the Applicant to aid in the reconsideration of the original Judgment which was filed on December, 23, 2013, grounds for the request is that the order does not contain true facts as required by S.C. Code Ann. § 17-27-80 and Rule 52(a) S.C.R.C.P.

FILED

2014 JAN 16 P 12:23

CLERK OF COURT
CHESTER CO S.C.

Respectfully Submitted,

James B. Curry #126737

Lee C. F. Kershaw #175
990 Wisacky Hwy.
Bishopville, S.C. 29010

CC: Judge Newman
Suzanne H. White

RECEIVED

MAR 13 2014

SC Court of Appeals

Pro Se,

State of South Carolina
County of Chester.

In the Court of Common Plea:
Indictments # 2007-6542-529-530-531-532

James B. Curry
Plaintiff

Vs.

State of South Carolina

Plaintiff's Motion
For New Trial based
on Newly discovered
evidence.
Pursuant to Rule 29(b)

FILED
2012 MAR 28 A 10:41
CLERK OF COURT
CHESTER COUNTY, SC

The Plaintiff James B. Curry Moves For a new Trial based on Newly discovered evidence pursuant to Rule 29(b) on the following grounds...

#1. The plaintiff received a signed Confession through the US mail from the perpetrator who committed the crime for which the plaintiff was wrongfully convicted of on Feb. 14th, 2008.

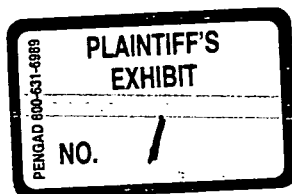
RECEIVED

MAR 13 2014

SC Court of Appeals

cc:

Attorney Generals
office



Respectfully Submitted,

James B. Curry

date March 27th 2012

State of South Carolina
County of Chester.

In the Court of Common Pl.
Indictments #2007-65-12-529-530-531-5

James B. Curry
Plaintiff,

Affidavit of
Evidentiary Support

Vs.

State of South Carolina
Respondant,

CLERK OF COURT
CHESTER COUNTY, S.C.

2017 MAR 28 A 10:48

FILED

Personally Appeared Before me James B. Curry Who being duly
Sworn Stated as follows...

- #1. I am the Plaintiff in the above named Case.
- #2. This Confession was sent to the department of Corrections through the US mail
- #3. I did not know this perpetrator was the guilty party at the time of trial and I used ^{due}diligence to discover such evidence.
- #4. I discovered this evidence on April 24th, 2011 after my first P.C.R

Sworn to and Subscribed
before me this 27 day
of March, 2012

Respectfully Submit:

Bracey Linn

James B. Curry

Notary Public For South Carolina

date March 27th 2012

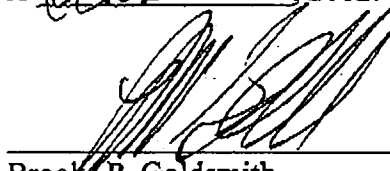
CC:
Attorney Generals
office

Summary

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Chester County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 1 day of October, 2012.



Brooks P. Goldsmith
Administrative Judge – Common Pleas
Sixth Judicial Circuit


_____, South Carolina

FILED
2012 OCT 10 P 2:14
CLERK OF COURT
CHESTER COUNTY, S.C.

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MAR 13 2014

SC Court of Appeals

State of South Carolina
County of Chester.

In The Court of Common Pleas,
Sixth Judicial Circuit.
Case # 2012 CP-12-0184

James B. Curry
Applicant,

Response to
Respondents Proposed
Conditional Order
Served Sept, 26th, 2012

V.

State of South Carolina
Respondent,

FILED
2012 OCT 11 11:57
CLERK OF COURT
CHESTER COUNTY, S.C.

In response to the respondents proposed Conditional order, served Sept, 26th, 2012 the applicant would show this Court that he is entitled to an evidentiary hearing, because there is an exception to the general one-year statute of limitations, when an applicant contends that there is evidence of material fact not previously presented and heard that requires vacation of the conviction or sentence in the interest of justice, and the application is filed within one-year after the date of actual discovery, This exception is commonly known as the discovery rule. The act

also provides a very narrow exception to allow a successive P.C.R. application where the applicant can provide a "sufficient reason" for why the grounds were not asserted in the original application: in that the applicant discovered a confession letter on April, 24th, 2011, that had been sent to the department of corrections by Hamario Ford confessing to the crime for which applicant was convicted, the applicant could not have discovered this evidence by the exercise of due diligence before trial, also this evidence meets the requirements for after discovered evidence pursuant to Hayden v. State, 278, S.C. 610, 611, 12, 299, S.E. 2d, 854, 855 (1983).

CC:

The Honorable Brooks P. Goldsmith,

Respectfully,

James B. Curry

10, 8, 2012

State of South Carolina
County of Chester.

James B. Curry #186437
Applicants

V.

State of South Carolina
Respondent,

In The Court of Common Pleas.
Sixth Judicial Circuit
Case # 2012-CP-0184

"P.C.R"

Cases, The South Carolina

Supreme Court Reversed

Holding that the Statute of
limitations did not apply because
of the "discovery Rule".

In response to the respondents proposed Conditional Order
Served Sept, 26th 2012 these cases would show the Court
that the Statute of limitations does not apply under the
"discovery Rule" and the Applicant is entitled to an
evidentiary hearing.

- #1. Coats V. State, 352 S.C. 500, 575 S.E.2d 557 (S.C. 2003)
- #2. Barr V. City of Rock Hill, 500 S.E.2d 157 (S.C. AAP (1998))

* Also attachments Submitted as follows...

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- #3. Current P.C.R application.

CC: The Honorable Brooks P. Goldsmith

Respectfully Submitted,

James B. Curry
10-11-12

FILED
2012 OCT 11
CLERK OF COURT
CHESTER COUNTY, S.C.

Argument

Case# 2012CP-120184

evidence discovered April 24th, 2011
P.C.R Filed March 28th, 2012

The Rationale Underlying a motion for a new Trial based on after discovered evidence is that the defendant should be given the opportunity to lay before the Jury, evidence which existed at the time of his trial which the defendant discovered since the trial, but could not have discovered prior to trial, in the instant case this evidence is dated January 15th, 08 the applicant went to trial on Feb, 11th, 08, and was found guilty by Jury on Feb, 14th, 08 this successive application should be permitted because of the discovery rule, the Courts refusal to hear this claim would constitute a "gross miscarriage of Justice."

Respectfully, Submitted

James B. Curry

10, 8, 2012

CC:

The Honorable Brooks P. Goldsmith

CLERK OF COURT
CHESTER COUNTY, S.C.

2012 OCT 11 P 12: 28

FILED

whichever is later: (1) the entry of a judgment of conviction; (2) the sending of the remittitur to the lower court from an appeal; or (3) the final decision upon an appeal.¹⁰⁴ For example, assume a criminal defendant is convicted of murder, sentenced to death, and judgment is entered on January 1, 2009. The defendant appeals to the South Carolina Supreme Court. His appeal is denied on June 1, 2009; he moves for a rehearing and that motion is denied on June 10, 2009. Then, the defendant seeks a writ of certiorari from the United States Supreme Court. His petition for certiorari is denied on January 1, 2010. The defendant must begin a PCR action by January 1, 2011, because the final disposition upon appeal occurred in his case on January 1, 2010.

If, however, the defendant had opted not to, or was unable to file a petition for certiorari in the United States Supreme Court, he should consider the statute of limitations for a PCR action as running one year from June 10, 2009—treating final disposition as occurring upon denial of his motion for rehearing before the South Carolina Supreme Court.¹⁰⁵ If the defendant had chosen not to file an appeal at all, he should commence a PCR action by January 1, 2010, because entry of the judgment of conviction occurred on January 1, 2009.

There are two exceptions to the general one-year statute of limitations. First, when the South Carolina Supreme Court or a court whose decisions are binding upon the South Carolina Supreme Court announces a new substantive standard or right

104. S.C. CODE ANN. § 17-27-45(A) (2003).

105. This suggestion is based on the most conservative reading of the statutory language. To our knowledge, there is no South Carolina case law explaining when a decision upon an appeal becomes “final.” For purposes of federal habeas corpus review, a judgment is not considered “final” until the conclusion of direct review (including certiorari proceedings) or the expiration of the time for seeking such review—meaning, where a defendant does not seek certiorari, for whatever reason, the judgment against him is not considered final until the time period in which he *could have* filed a petition for certiorari has expired. But, because there is no South Carolina authority expressly adopting this approach for state post-conviction, we prefer to err on the safe side and recommend that applicants who do not seek certiorari treat their appeals as “final” upon denial of rehearing (or upon denial of direct appeal if no rehearing is sought).

that is intended to be applied retroactively,¹⁰⁶ a PCR applicant has one year from the date on which the new standard or right was determined to commence a PCR application.¹⁰⁷ This rule applies even if the general statute of limitations has already expired.¹⁰⁸ Thus, in the first example above, assume the defendant was required to commence a PCR proceeding by January 1, 2011 but failed to do so. Under normal circumstances, this defendant's PCR application is untimely because the statute of limitations has expired. If, however, the United States Supreme Court announces a new substantive standard or right that applies to this defendant on June 1, 2011, and if that new rule is intended to be applied retroactively, the defendant may nonetheless commence a PCR proceeding as long as he does so within one year after the Court's decision announcing the new rule.

Second, if a PCR applicant has newly discovered evidence,

106. South Carolina courts are required to follow the United States Supreme Court decisions on retroactivity. See, e.g., *Danforth v. Minnesota*, 522 U.S. ___, 128 S. Ct. 1029, 1035 (2008); *Talley v. State*, 640 S.E.2d 878, 880-81 (S.C. 2007). In general, a new procedural rule will not be applied retroactively unless the new rule falls within one of two exceptions: (1) it "places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe;" or (2) it "requires the observance of those procedures that . . . are implicit in the concept of ordered liberty." *Teague v. Lane*, 489 U.S. 288, 307 (1989) (internal quotation marks omitted) (internal citation omitted). Examples of decisions falling within the first exception include *Atkins v. Virginia*, 536 U.S. 304 (2002) (excluding mentally retarded offenders from the death penalty), and *Roper v. Simmons*, 543 U.S. 551 (2005) (barring the death penalty for juvenile offenders). The second exception is "reserved for watershed rules of criminal procedure" which implicate the fundamental fairness and accuracy of the proceeding. *Teague*, 489 U.S. at 311. The Supreme Court has repeatedly cited *Gideon v. Wainwright*, 372 U.S. 335 (1963), as an example of the watershed exception. *Id.* (holding that the Sixth Amendment right to assistance of counsel for all criminally accused is made obligatory on the states by the Fourteenth Amendment).

107. S.C. CODE ANN. § 17-27-45(B) (2003); see also *Talley*, 640 S.E.2d at 882 (determining that the limitations period set forth in section 17-27-45(B) applied in *Talley's* post-conviction relief application because the application was filed within one year of *Alabama v. Shelton*, 535 U.S. 654 (2002), which announced a watershed rule of criminal procedure that applies retroactively).

108. See *Franklin v. Maynard*, 588 S.E.2d 604, 606 n.7 (S.C. 2003) (citing S.C. CODE ANN. § 17-27-45(B)) (an applicant is not barred from raising mental retardation in a second PCR application).

she may benefit from a more lenient statute of limitations. Specifically,

[i]f the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.¹⁰⁹

This exception is commonly known as "the discovery rule." In *Coats v. State*,¹¹⁰ PCR applicant Roger Coats alleged his trial attorney was ineffective for improperly advising him that he would be eligible for parole if he pled guilty to conspiracy to trafficking marijuana.¹¹¹ Coats ultimately pled guilty, and he was sentenced to seven years imprisonment.¹¹² Coats did not pursue a direct appeal.¹¹³ After the one-year statute of limitations had expired, Coats learned he was not eligible for parole.¹¹⁴ The lower court denied the defendant's PCR application.¹¹⁵ The South Carolina Supreme Court reversed, holding that Coats's claim fell within the "discovery rule."¹¹⁶ The court observed that Coats's understanding of "his parole eligibility may have affected the validity of the underlying plea."¹¹⁷ Because Coats filed his claim within one year after discovering his trial attorney's error, his petition was timely and he was entitled to an evidentiary hearing to determine if his trial counsel was in fact ineffective.¹¹⁸

Aside from the two statutory exceptions, there may certainly be situations in which the statute of limitations may be equitably tolled.

109. S.C. CODE ANN. § 17-27-45(C) (2003).

110. 575 S.E.2d 557 (S.C. 2003).

111. *Id.* at 558.

112. *Id.* at 557.

113. *Id.*

114. *Id.*

115. *Id.* at 558.

116. *Id.*

117. *Id.*

118. *Id.* at 559.

State of South Carolina
County of Chester.

In The Court of Common Pleas

Case # 2012-CP-12-0184

James B. Curry
Applicant,

AMENDED Application

FOR Post-Conviction RELIEF

to Supplement application previously

Filed on March 28th, 2012,

V.

State of South Carolina
Respondent,

Applicant, James B. Curry hereby Files this Amended application
For Post-Conviction Relief in response to Respondents proposed
Conditional order Submitted September, 26th, 2012 as follows...

10. State Concisely the ground on which you base your allegation that you
are being held in custody unlawfully: Newly discovered evidence,
in that: applicant contends that there is evidence of material facts
not previously presented and heard that requires vacation of the
conviction or sentence in the interest of justice.

11. State Concisely and in the same order the facts which support
each of the grounds set out in (10): in that
applicant received a signed confession through the US mail
from the perpetrator who committed the crime for which the
applicant was wrongfully convicted.

CHESTER COUNTY, S.C.
CLERK OF COURT

2012 OCT 11 PM 4:30

FILED

RECEIVED

MAR 13 2014

SC Court of Appeals

CC:
The Honorable Brooks P. Goldsmith
Suzanne K. White, SC 114...

2012CP/200/84

STATE OF SOUTH CAROLINA)
County of Chester)

In the Court of Common Pleas

James Bernard Curry #186734)
Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)
Name of Respondent)

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
CHESTER COUNTY, S.C.

2012 MAR 28 A 11:17

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution
990 wisacky Hwy Bishopville S.C 29010
2. Name and location of Court which imposed sentence General Sessions
140 main Street Chester S.C 29706
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Armed Robbery
 - (b) 1st degree Burglary
 - (c) Kidnapping
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Feb 14th, 08, 25 years
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? NO

7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. did not appeal
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) dismissed appeal to pursue post Trial Motions
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Newly discovered evidence / Third party Guilt
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) plaintiff received a Signed Confession through the US. mail
From the perpetrator who committed the Crime For which

(b) the plaintiff was wrongfully convicted.

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

~~Yes~~ Yes

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Motion - after discovered evidence

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Chester General Sessions Court

ii. Clerk of Court's office

iii. 140 main Street

iv. Chester S.C 29706

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. Feb, 9th, 09
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Newly discovered evidence / Solicitor office would not
- (b) Schedule Hearing date which is why I'm filing this PCR
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
NO

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Nathan Sheldon 1339 Ebenezer Rd Rock Hill S.C 29732
- ii. Michael H. Lifsey 3888 Chester Hwy po. Bx 1809
- iii. Lancaster S.C 29731

(b) the proceedings at which each such attorney represented you:

- i. Motion For New Trial based on after discovered evidence
- ii. Motion For New Trial based on after discovered evidence
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacate Conviction and remand For New Trial.

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
COUNTY OF Chester)

VERIFICATION

I, James Bernard Curry, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X James B. Curry

Sworn to and subscribed before me
This 27 day of Mar, 2012

A Bracey Junior L.S.
Notary Public for South Carolina

My Commission Expires 5-16-12

FILED
2012 MAR 28 A 11:17
CLERK OF COURT
CHESTER COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, James Bernard Curry, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

X James B. Curry
Applicant

Sworn to and subscribed before me
This 27 day of Mar, 2012

A Bracey Junior L.S.
Notary Public for South Carolina

My Commission Expires: 5-16-12

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

James Bernard Curry, #186737,)
)
Applicant,)

2012-CP-12-0184

FILED
2013 DEC 23 P 12:29
CLERK OF COURT
CHESTER CO S.C.

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 28, 2012. The Respondent made its Return and Motion to Dismiss on or about June 25, 2012. On October 1, 2012, Judge Brooks P. Goldsmith signed a Conditional Order of Dismissal. After receiving Applicant's objections and responses to the Conditional Order of Dismissal, this matter was set for a hearing on the State's Motion to Dismiss. The hearing took place at the Lancaster County Courthouse on August 6, 2013. The Applicant was present at the hearing and was initially represented by Tristan Shaffer, Esquire. During the hearing, Applicant requested to proceed *pro se*, and this Court allowed him to do so. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. In addition to the testimony, this Court had before it Applicant's records from the South Carolina Department of Corrections, the records of the Chester County Clerk of Court regarding the subject convictions, Applicant's appellate records, the current Application and associated records and documents, the trial transcript, and various exhibits entered into evidence by Applicant.

RECEIVED

MAR 13 2014

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Clerk of Court for Chester County. The Applicant was indicted for first degree burglary (07-GS-12-0529), armed robbery (07-GS-12-0532), kidnapping (07-GS-12-0531), and assault and battery of a high and aggravated nature (07-GS-12-0532) at the July 2007 term of the Court of General Sessions for Chester County. The Applicant proceeded to trial *pro se* with Yale Zamore, Esquire, appointed to appear as stand-by counsel. On February 14, 2008, a jury convicted the Applicant as indicted. The Applicant was sentenced by Judge Goldsmith to twenty-five (25) years' confinement each for first degree burglary, armed robbery, and kidnapping, and ten (10) years' confinement for assault and battery of a high and aggravated nature—all sentences to run concurrent.

A timely Notice of Appeal was filed on the Applicant's behalf. Thereafter, the Applicant indicated his desire to withdraw his appeal to pursue post-trial motions. The original appeal was then dismissed and the Remittitur was sent on April 8, 2009. A second appeal was filed and subsequently withdrawn following the denial of Applicant's first post-trial motion on October 13, 2009. On January 22, 2010, the second appeal was dismissed by written Order; the Remittitur was sent on February 10, 2010. The Applicant's second post-trial motion was dismissed by written Order on March 18, 2010.

2010-CP-12-0228

The Applicant subsequently filed his first application for post-conviction relief (PCR) on May 14, 2010. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Invalid waiver of trial counsel; in that,

- a. "Upon waiver of trial counsel rights the applicant had a mental disorder?"
2. Violations of Applicant's 5th, 6th, and 14th Constitutional rights;
3. Juror misconduct discovered after trial; in that,
 - a. "Juror #38 intentionally concealed the fact that she had a social relationship with State witness Chief Mike Revels and Mayor H.C. Starnes,"
 - b. "Juror #38 failed to reveal relevant information and facts during the jury selection process that would have supported a challenge for cause or would have been a material factor in the use of a peremptory strike,"
4. Due process violations; in that,
 - a. "Corruption during the course of investigation, due process violation,"
 - b. "During trial the Applicant's defense and main contention was that the investigating officer Chief Mike Revels was corrupt and set him up. Since Applicant's conviction, Revels has been charged by the State of South Carolina for misconduct in a subsequent investigation which brings into question the veracity of the Applicant's investigation and the validity of the conviction."
5. Violation of sixth amendment right to counsel; in that,
 - a. "Applicant was not appointed counsel to assist with a motion for a new trial on the ground of after discovered evidence filed on December 29, 2009."

On or about December 16, 2010, Respondent filed its Return. On February 23, 2011, an evidentiary hearing was held in Lancaster County. The Applicant, who was present for the hearing, was represented by Jay W. McKeown, Esquire; Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Judge J. Ernest Kinard, Jr., denied the Applicant's PCR application by written Order, filed on April 20, 2011.

Thereafter, the Applicant filed a document titled "Motion to Alter or Amend Order of Dismissal," dated April 26, 2011. On or about May 3, 2011, the Applicant filed a Return to Applicant's Motion to Alter or Amend Order of Dismissal. By written Order, dated May 9, 2011, Judge Kinard dismissed the Applicant's Motion. The Applicant did not appeal the denial of his application.

ALLEGATIONS

In this application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence; in that,
 - a. Applicant has received a signed confession through the U.S. mail from the perpetrator who committed the crime for which the plaintiff was wrongfully convicted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and to hear the testimony and arguments presented at the PCR hearing. In addition, this Court has observed the testimony and evaluated its credibility. Having weighed the testimony I hereby set forth the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003).

Motions of Appellant

The Applicant waived the right to proceed with his Motion to Recuse Judge Goldsmith. In addition, I denied the Applicant's Motion for Default against Respondent for lack of merit and a failure to demonstrate any prejudice.

Newly Discovered Evidence Claim

I find that this PCR Application should be dismissed for failure to comply with the filing procedures as outlined in the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) provides:

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 South Carolina Supreme Court has held that the statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). In the instant case, the Applicant was convicted of the offenses which he challenges in this Application on February 14, 2008. The Applicant's appeal was denied, and a Remittitur was issued on February 10, 2010. Therefore, the Applicant was required to file an application before February 10, 2011. The Application was filed on March 28, 2012—more than a month after the statutory filing period had expired.

Furthermore, this Court finds that the current Application should be dismissed because it is successive to the previous PCR application. Successive applications for post-conviction relief are generally disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

S.C. 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 PCR applications are barred unless an applicant is able to identify a "sufficient reason" why novel grounds for relief were not raised at all or were not raised properly in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the allegations could have been raised by an Applicant in a previous application, then those grounds may not be raised by the Applicant in successive applications.

Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

In this case, the Applicant alleges that he could not have raised this claim previously because of newly discovered evidence. A defendant 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. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has the burden of proving he has met the requirements for newly-discovered evidence. I find that the Applicant failed to meet this burden of proof.

The Applicant testified that, while "scrourging around the office getting Band-Aids and alcohol swabs," at the SCDC facility where he was located on April 24, 2011, he found a letter addressed to the Applicant from Mario Ford. The Applicant testified that in Ford's letter, dated January 15, 2008; Ford accepts responsibility for the crimes for which the Applicant had been convicted. The Applicant testified that Mr. Ford was murdered two months after the letter was written. The Applicant subsequently submitted two newspaper articles showing Lamario Ford was killed on March 31, 2009.

I do not find the testimony of the Applicant regarding Ford's letter to be credible. Specifically, I do not find it credible that Lamario Ford wrote a letter to the Applicant dated one month prior to Applicant's conviction in 2008, but did not send the letter to Applicant until 2009—as Applicant claimed the copy of the envelope reflected—which was then not discovered until 2011, more than two years later. Due to the Applicant's lack of credibility regarding the timing of the alleged discovery date of the "letter," I find that the Applicant has failed to meet his

burden of proof as to establishing a claim of newly discovered evidence sufficient to overcome the statute of limitations and law against successive applications. I find that this evidence would not likely affect the outcome of a trial if another were to be held, as the death of Lamario Ford makes any such evidence inadmissible due to lack of authentication as his testimony is silenced by death. Therefore, this application is denied and dismissed.

CONCLUSION

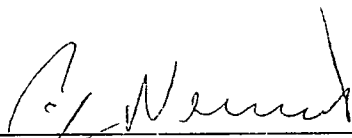
In consideration of the foregoing, I find and conclude that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to the assistance of appellate counsel in seeking review of the denial of PCR. Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. South Carolina Appellate Court Rule 243 provides appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19th day of December, 2013.



Clifton Newman
Presiding Judge

FILED
2013 DEC 23 P 12: 29
CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

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James Bernard Curry, #186737,
Applicant,

2012-CP-12-0184

MAR 13 2014

SC Court of Appeals

v.

ORDER DENYING MOTION TO
ALTER OR AMEND
ORDER OF DISMISSAL
AND DENYING REQUEST FOR
ORAL ARGUMENT

State of South Carolina,

Respondent.

FILED
2014 FEB 26 P 3:26
CLERK OF COURT
CHESTER CO S.C.

This matter comes before the Court by way of Applicant's two Motions to Alter or Amend the Order of Dismissal (hereinafter "the Order") filed on December 23, 2013, in the Chester County Clerk of Court office and on Applicant's Motion Requesting Oral Argument regarding the previously-filed Motions to Alter or Amend the Order. The Applicant's first Motion to Alter or Amend, which alleges that the Order contains a false statement, was filed on January 2, 2014.¹ The Applicant filed a second Motion to Alter or Amend on January 6, 2014,² which notes the Applicant's objection to the Court's previous ruling on the authentication and admissibility of the letter allegedly written by Lamario Ford. The Applicant filed a Motion Requesting to Present Oral Argument on his previous Motions to Alter or Amend the Order on January 16, 2014.

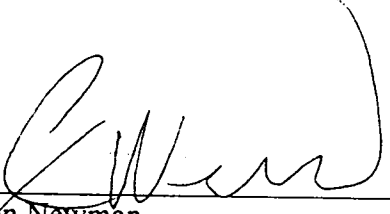
¹ The Chester County Clerk of Court timestamp indicates the Applicant's Motion was filed on January 2, 2013. This discrepancy in year is likely an error, as the date provided by the Applicant on the hand-written document is December 30, 2013.

² The Chester County Clerk of Court timestamp indicates the Applicant's Motion was filed on January 6, 2013. This discrepancy in year is likely an error, the date provided by the Applicant on the hand-written document is December 30, 2013.

Having carefully considered the arguments submitted and applicable law, the Court finds that both Motions to Alter or Amend should be DENIED. The Court further finds that oral argument would serve no useful purpose and the request for oral argument is DENIED.

IT IS THEREFORE ORDERED that Applicant's motions are hereby DENIED.

AND, IT IS SO ORDERED!



Clifton Newman
Presiding Judge

February 21, 2014
Columbia, South Carolina

James B. Curry #186737
Lee CJE Kershaw 1125
990 Wisacky Hwy.
Bishopville S.C 29010

The South Carolina Court of Appeals

Office of the Clerk

P.O. Bx. 11629

Columbia, S.C 29211

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MAR 13 2014

SC Court of Appeals

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MAR 10 2014

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