

EXHIBIT

STATE OF SOUTH CAROLINA
COUNTY OF GREEN

THE COURT OF COMMON PLEAS
A. No. 2013-CP-23-0993

B

Darnell East Hudson,
S.C.D.C. No. 227328,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN AND MOTION TO DISMISS

FILED
CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA
2013 SEP 15 PM 1:35

The Respondent, making its Return to the application for post-conviction relief filed February 19, 2013, would respectfully show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

The Respondent submits this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). 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 South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had 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 the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent submits the Applicant’s claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

This Court notes the Applicant has failed to articulate the exact nature of the “new evidence” and has not attached any documentation of such to the PCR application. The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the “new evidence” offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

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.”).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

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By:


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8/5, 2013

