

The Supreme Court of South Carolina.

James B. Curry #186737
Petitioner,
Vs.

Case# 2012-CP-0184
Appellate # 2014-000571

State of South Carolina
Respondent,

In RE: to Rule 243(c) SCACR.
& lower Court's abuse of discretion.

RECEIVED

Petition For Reinstatement.

MAY 15 2014

Petitioner respectfully request that the Supreme Court ~~reinstates~~ **S.C. SUPREME COURT** appeal of the denial of petitioners PCR application, basis for this petition is petitioner received an order signed by Chief Justice Toal on May 1, 2014, stating that petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper as required by Rule 243(c) of SCACR, and accordingly the matter is dismissed, I now provide this "sufficient explanation as to why the PCR Court's determination was improper."

#1. There is an exception to the general one-year statute of limitations when the applicant has newly discovered evidence on the application is filed within one-year after the date of actual discovery, this exception commonly known as the discovery rule is petitioners argument, the petitioners evidence was discovered on April 24, 2011 on the application was filed March 28, 2012 which under the discovery rule is timely.

#2. The act provides a very narrow exception to allow a successive PCR application where the applicant can provide a "sufficient reason for why the ground was not raised in the original application in that petitioner testified that while scrounging around the office getting Band-Aids and alcohol swabs at the S.C.C. facility where he was located he discovered a letter addressed to petitioner from Mario Ford on April 24, 2011 which Ford accepts responsibility for the crimes for which petitioner was convicted. Petitioner's argument is that the ground could not have been raised in the previous application on May 14, 2010.

Tilley v. State 334 S.C. 24, 511 S.E.2d 689 (1999) Respectfully Submitted,

May, 13th, 2014

CC: Suzanne H. White
James B. Curry

James B. Curry #186737
c/o Col. Kershaw 1125
990 Wisacky Hwy.
Bishopville S.C. 29010
Prose,

Argument

Case# 2012CP-120184

Appellate# 2014-000517

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

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. Sheton*, 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.

the direct appeal issues.

(2) When the post-conviction relief judge has found that the applicant is not entitled to a *White v. State* review, the petition shall raise the question of waiver of the right to a direct appeal along with all other post-conviction relief issues petitioner seeks to have reviewed. The petition shall also contain a "Statement of Issues on Appeal" listing the issues to be raised if a *White v. State* review is granted; this statement of issues shall comply with the requirements of Rule 208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue.²⁹¹

C. Successive Applications

The PCR Act requires applicants to assert "all grounds for relief available" in the original application.²⁹² Second, or successive, applications are disfavored and the South Carolina Supreme Court has repeatedly voiced hostility toward them.²⁹³ A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. The Act provides a very narrow exception to allow a successive PCR application where the applicant can provide a "sufficient reason" for why the ground was not asserted or was inadequately raised in the original application.²⁹⁴ The court has strictly construed the term "sufficient reason," holding that it means that the ground "could not have been raised" in the previous application.²⁹⁵ Thus, "as long as it was possible to raise the

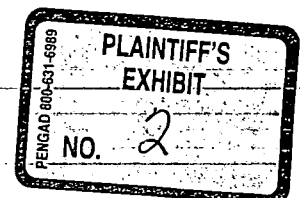
291. S.C. APP. CT. R. 243(i).

292. S.C. CODE ANN. § 17-27-90 (2003).

293. See, e.g., *Aice v. State*, 409 S.E.2d 392, 394 (S.C. 1991); *Carter v. State*, 362 S.E.2d 20, 21 (S.C. 1987); *Land v. State*, 262 S.E.2d 735, 737 (S.C. 1980).

294. § 17-27-90.

295. *Odom v. State*, 523 S.E.2d 753, 755 (S.C. 1999); *Tilley v. State*, 511 S.E.2d 689, 691 (S.C. 1999). Although no South Carolina court has explicitly addressed the question, the authors believe that circumstances satisfying the PCR Act's exceptions to the statute of limitations (i.e., a new retroactive rule of law and newly discovered evidence as defined by S.C. CODE ANN. section 17-27-45 (2003)) should *invariably* qualify as a "sufficient reason" permitting a successive petition. *C.f. Franklin v. Maynard*, 588 S.E.2d 604, 606 & n.7 (S.C.



Statement of Issues on Appeal. Case # 2012-CP-12-0184

RE: abuse of discretion.

#1. Whether the Court erred by violating S.C. Code Ann § 17-27-80 (2003) and Rule 52(A) S.C.R.C.P. in that: The Court states that the applicant testified that Mr. Ford was murdered two months after the letter was written.

#2. Whether the Court erred by ruling that appellants application should be dismissed for failure to comply with the Uniform Post-Conviction Act, procedures as outlined in the Uniform Post-Conviction Act, S.C. Code Ann § 17-27-10 to 160 in that: the applicant met the 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.

#3. 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

#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. in that: The appellant 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 S.C.R.C.P. is "Self Authentication" thus appellants proffered ^{evidence} was admissible under Rule 804 S.C.R.C.P. Unavailability of the witness because of death. Hearsay exceptions

FILED
2014 MAR 13 PM 1:11
CLERK OF COURT
CHESTER, S.C.

State of South Carolina
County of Chester.

James B. Curry
Plaintiff

Vs.

State of South Carolina

In the Court of Common Pleas
Indictments # 2007-65-12-529-530-531-532

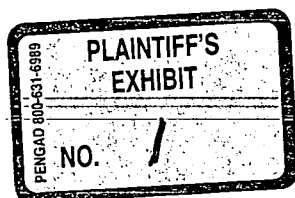
Plaintiff's Motion
For New Trial based
on Newly discovered
evidence.
Pursuant to Rule 29(b)

FILED
2017 MAR 28 A 10:41
CLERK OF COURT
CHESTER COUNTY

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.

cc:
Attorney General's
Office



Respectfully Submitted,

James B. Curry

date: March 27th, 2012

State of South Carolina
County of Chester.

In the Court of Common Pleas
Indictments #2007-65-12-529-530-531-532

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 Sim
Notary Public For South Carolina

James B. Curry
date March 27th 2012

cc:
Attorney Generals
office

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 26th 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.

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.

FILED
2012 OCT 11 P 4:30
CLERK OF COURT
CHESTER COUNTY, S.C.

cc:
Honorable Brooks P. Goldsmith
Suzanne H White SC Attorney General Office

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 to Alter or Amend
Order of Dismissal

Vs.

State of South Carolina
Respondent.

FILED
2013 JAN - 2 P 12:44
CLERK OF COURT
CHESTER CO S.C.

CLERK OF COURT
OFFICE
JAN 2, 2014
12:44 PM A.M. P.M.
Sue 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
Prose.

Judge Newman
Court Administrator
Attorney General.

State of South Carolina
County of Chester

In the Court of Common Pleas
Sixth Judicial Circuit
Case # 2012-CP-12-0124

James B. Curry
Applicant,

Motion to Alter or Amend

Vs.

Order of Dismissal

State of South Carolina
Respondent,

FILED
CLERK OF COURT'S OFFICE
CHESTER, SC

DATE: Jan 6, 2014
TIME: 11:50 A.M. A.M. P.M.

Such H. Carpenter
Clerk of Court

FILED

2013 JAN - 6 AM 11:50

CLERK OF COURT
CHESTER, SC

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
A. L. ...

This 30th day of December, 2013.

Respectfully Submitted.

James B. Curry
Prose,

County of Chester,

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 1:10
CLERK OF COURT
CHESTER COUNTY

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.

Respectfully Submitted
James B. Curry
Prose.

Dec 2nd 2013

C:
Judge 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.

V.

State of South Carolina

Motion to the
Court of Perjury
or False Statement

FILED
2013 DEC 05 P 1:07
CLERK OF COURT
CHESTER CO S.C.

Dear, Judge Newman on Dec, 2nd 2013 I James B. Curry Submitted a Motion and proposed order to your Kingstree office and Filed a Copy with the Chester Co, Clerk of Court requesting that this Court do not Sign the respondents proposed order because the respondents Only objection or Motion during the hearing on August, 6th 2013 was on the issue of authenticity, I proved authentication by Submitting Certified Copies to the Court Showing that the original document had been Filed in the Clerks office Prior to the hearing.

To day Dec, 3rd 2013 I received a copy of the respondents proposed order and Noticed that perjury or False Statement had been Committed on page# 6 respondent States that hamario Ford died in 2008 I Submitted to the Court a copy of the Death Notice proving that Ford died on March 31st 2009, Thus this evidence could not have been raised in the previous Application because it was unavailable.

Therefore once again I request that the respondents proposed order Not be Signed.

Copy Filed

CC: Judge Newman

RespectFully Submitted,
James B. Curry

12-4-13

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 SC

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 #185737
James B. Curry # 185737
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC. 29010

Date: Dec, 2nd 2013

APPLICANT, PRO SE.

11Bit

1-15-08

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-159-008-DVANG

(3)

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

2012 NOV -5 P 4: 34

FILED

CHESTER COUNTY, S.C.
CLERK OF COURT

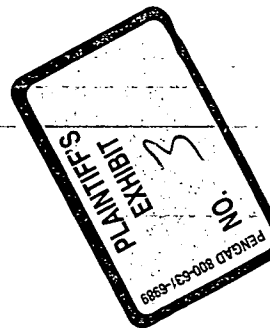
Mario Ford
Great Falls, S.C. 29055
2009 PM 11
C 292



off. J.
James Benard Curry
Lee Correction Inst.
~~Chesterfield's 2216~~
990 Wiscaky Hwy
Bishoppe Ville, S.C.
Inmate # 186737

201011775

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



FILED
2013 DEC -5 P 1:07

Cemetery in Richburg with the Rev. Michael Shaffer officiating
Mrs. Hurst, 86, died Tuesday, March 31, 2009 at Magnolia Manor in Rock Hill.

Born in Chester on March 18, 1923, she was a daughter of the late A.H. and Irene Smith Bagley.

Chester, S.C. nephew J.G. Knox III of Tega Cay a great niece Bagley Knox of Tega Cay, and a great-nephew J.G. Knox IV of Fort Lawn, S.C.

She was preceded in death by her husband, Sidney D. Hurst, and a daughter, Irajean Wrenn Hudson.

Hospice House, P.O. Box 993, Rock Hill, SC 29731. Condolences can be made to the family at www.barronfuneralhome.com.

Barron Funeral Home, 133 Wylie St., Chester, is in charge of arrangements.

DEATH NOTICE

Mr. Lamario Demond Ford, 26

GREAT FALLS - Mr. 2009 Lamario Demond Ford, 26, of 5243 George Beard Ave. died Tuesday, March 31,

The family will receive friends at the residence. Arrangements will be

announced later by King's Funeral Home, 2367 Douglas Road, Great Falls.

Great Falls man killed in Lancaster

BY JENNY ARNOLD
Landmark News Service

A Great Falls man died after being beaten and shot inside a vacant Cunningham Street, Lancaster home early Tuesday morning, according to the Lancaster Police Department.

According to an incident report, officers were called to 643 Cunningham St. at 1:32 a.m.

Officers found Lamario Demond Ford, 26, of 5243 George Beard Ave. Great Falls, on his back in the living room. He had blood all over his face, the report said.

A woman told police that she came with Ford to Lancaster to visit a friend who lived near Discourt

Beverage Store on nearby Chesterfield Avenue, the report said.

Ford and the woman stayed at the friend's house for about 20 minutes when Ford got a call from someone wanting to meet him at 643 Cunningham St., the report said.

When the two arrived at the address, the woman said she saw that the door of the house was wide open.

Ford went inside and a couple of minutes later, a man came out of the house and put a gun to the woman's head, the report said.

The woman got out of the car and realized six or seven men were beating Ford, the report said. She then heard a gunshot, the

report said. The woman ran to a 90-year-old neighbor's house to call police.

Police were tight-lipped about the crime on Tuesday.

The State Law Enforcement Division worked with local investigators at the home on Tuesday, looking for evidence.

"We're not giving out any additional information right now," Capt. Harlean Howard of the Lancaster Police Department said.

Anyone with information about the incident can call the Lancaster Police Department at 283-1171.

Jenny Arnold is the senior reporter at the Lancaster News.

House votes to fund USCL in new budget

BY JESSE WILLIAMS
Landmark News Service

Allegations of human rights abuses in the Sudan have been taken

debated from the House budget. We would have been doing a passably sane job of handling the budget

He believes "we are 60 to 65 percent of the way home" in saving the Lancaster campus.

At the end of the day,

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.



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

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.

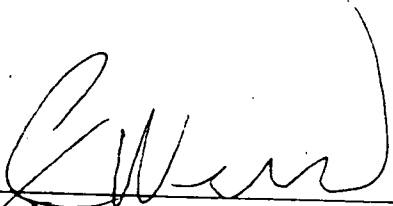
¹ The Chester County Clerk of Court timestamp indicates the Applicant's Motion was filed on January 2, 2013. This discrepancy in year is likely an error, as the date provided by the Applicant on the hand-written document is December 30, 2013.

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
)
)
 James Bernard Curry, #186737,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2012-CP-12-0184

ORDER OF DISMISSAL

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

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.

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 "scrounging 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

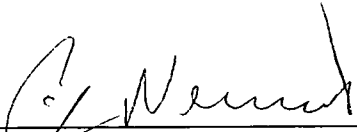
In consideration of the foregoing, I find and conclude that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is hereby denied and dismissed with prejudice.

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.

STUDY NOTES

5-13-14

Dear Mrs. Toal

I really hope I am permitted to proceed with my Appeal I have been locked up for 7 years wrongfully convicted, All I want is a New Trial where I can prove my Innocence.

RECEIVED

MAY 15 2014

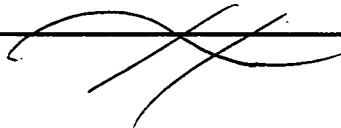
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S.C. SUPREME COURT

I would like to ask you a question? is that too much to ask for.

Thank you

James B. Curry



James B. Curry #186737

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"agency mail"

Chief Justice, Toal

The Supreme Court of South Carolina

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