



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 516
Kingstree, SC 29556-0516
Phone: (843) 355-9321
Fax: (843) 355-9301
cnewmanj@sccourts.org

December 19, 2013

Dear Ms. Carpenter:

Enclosed for filing is the original signed Order of Dismissal in Curry v. State (2012-CP-12-0184). Please serve the Order on all parties.

Should you require any additional information, please do not hesitate to contact our Office.

Sincerely,

Simone R. Martin
Law Clerk to The Honorable Clifton Newman
Third Judicial Circuit
Post Office Box 516
Kingstree, SC 29556-0516
cnewmanlc@sccourts.org
Office: (843) 355-9321 Ext: 7302
Fax: 843-355-1576

RECEIVED

MAY 15 2014

S.C. SUPREME COURT

FILED

2013 DEC 23 P 12:29

CLERK OF COURT
CHESTER CO S.C.

Enclosure

2014-000577

Dear, Mrs, Toal

While taking under consideration my request to Reinstate my Appeal Please look at how the Respondent have played with my life by Changing Facts on page#6 of the Amended order, IF Mr. Newman would have waited he would have gotten the Amended order, But he went and Drew up his own order and Signed it on December 19th, 2013.

"Note" and put the Same False Statement in his order that was taken out by Ms, Suzanne H. White which is why I Have moved the Court For an Indictment Investigation an motion to Void order, So Please Reinstate my appeal and Hold in abayance.

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 be
Heard.

in RE: to perjury Investigation.

Applicant, James B. Curry by and through his self representation hereby request this Court to schedule a hearing within 30 days in RE: to Applicant's Filed Petition & Motion to Void Order which was served on the Administrative Judge the Honorable Brian M. Gibbon on March, 19th, 2014.

CLERK OF COURT
CHESTER CO S.C.

2014 APR -9 P 1:46

FILED

Respectfully Submitted,

James B. Curry #186737
Lee C.I. Kershaw #25
990 Wisacky Hwy.
Bishopville S.C 29010
Prose,

CC:
Attorney General.
Court Administration,
SLED,

State of South Carolina
County of Chester.

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

State of South Carolina
Respondent,
Vs.

Petition For
Indictment Investigation.

James B. Curry #186131
Applicant,

FILED
2014 MAR 19
CLERK OF COURT
CHESTER CO. S.C.

To: The Administrative Judge within the Sixth Judicial Circuit
I James B. Curry hereby request this Court to order that
an Investigation into Judicial Misconduct by the Honorable
Clifton Newman For Violation of S.C code 16-9-10 perjury
that was committed within the order of Dismissal of P.C.R
application on Dec, 19th, 2013 and Failure to Alter or Amend
the Judgment when he had the opportunity. The South Carolina
Supreme Court Held that when a Judge has committed a violation
of applicable rules of Judicial Conduct the Administrative Judge
May order an inquiry. "False statement on page #6 of the Order states
the applicant testified that Mr. Ford was murdered
two months after the letter was written.

Respectfully Submitted,

CC: Administrative Judge

James B. Curry #186131
Lee C. Kershaw II AS
990 Wisacky Hwy.
Bishopville S.C 29010
Prose,

The State of South Carolina
County of Chester.

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

State of South Carolina
Respondent,

Vs.

Motion to
Void Order
of Dismissal.

James B. Curry
Applicant,

FILED
2014 MAR 19 11:06
CLERK OF COURT
CHESTER CO S.C.

TO: The Administrative Judge within the Sixth Judicial Circuit
I James B. Curry hereby request this Court to Schedule
a hearing upon investigation of violation of 16-9-10
perjury within the order of dismissal committed by the
Honorable Clifton Newman on Dec, 19th, 2013, in which at
fore said time, I will move the Court to void such order
and grant applicant a new trial, on the grounds that
an order which contain perjury the order is No Good.
in that: The Court states the Applicant testified that Mr. Ford was murdered
two months after the letter was written. Page #6

CC:
Administrative Judge,
Attorney General.

Respectfully Submitted,
James B. Curry #186137
Lee C. Kershaw 1135
990 Wisacky Hwy.
Bishopville S.C 29010
Prose,



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

November 27, 2013

The Honorable Clifton B. Newman

Presiding Judge

~~1501 Main St. 516~~

~~Columbia, SC 29201~~

Kingstree, S.C. 29556

RE: James Bernard Curry v. State
2012-CP-12-0184

Morris Calvin Harris v. State
2012-CP-29-1534

Curtis Lee Patterson v. State
2012-CP-29-1370

Dear Judge Newman:

Enclosed please find my proposed Orders in the above matters. If these orders meet with your approval, please sign them. You may then file the orders with the appropriate Clerk and have her serve the orders on all parties. I have enclosed an envelope, stamped and addressed to the Chester and Lancaster Clerk of Court, for your convenience. If you have any questions, please feel free to contact me.

With highest regards,

Suzanne H. White
Assistant Deputy Attorney General

SHW/aam
Enclosures

cc: James Bernard Curry, SCDC No. 186737, (w/enclosure)

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

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. A Conditional Order of Dismissal was signed on October 1, 2012, by the Honorable Brooks P. Goldsmith. However, 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. A hearing into the matter was convened on August 6, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was initially represented by Tristan Shaffer, Esquire. However, at the hearing, Applicant requested and this Court allowed him to proceed *pro se*. 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. This Court also had before it a copy of the records of the Chester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the current Application and associated records and documents, Applicant's appellate records, 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 of the Clerk of Court for Chester County. The Applicant was indicted at the July 2007 term of the Court of General Sessions for Chester County 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). 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 Honorable Brooks P. Goldsmith sentenced the Applicant to confinement for twenty-five (25) years each for first degree burglary, armed robbery, and kidnapping, and ten (10) years 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. However, the Applicant indicated his desire to withdraw his appeal to pursue post-trial motions. After the Applicant indicated his desire to withdraw his appeal, the original appeal was 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 pre-trial motion, which was dismissed on October 13, 2009. The second appeal was dismissed by written Order on January 22, 2010. The Remittitur was sent on February 10, 2010. Applicant's second post-trial motion was then 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. 5th, 6th, and 14th Amendment violation;
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."

Respondent made its Return on or about December 16, 2010. An evidentiary hearing was convened at the Lancaster County Family Court on February 23, 2011. The Applicant was present and 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 application by written order filed April 20, 2011.

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

ALLEGATIONS

In his 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 has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant's Motions

Applicant waived the right to proceed with his Motion to Recuse Judge Goldsmith, which had been raised prior to the hearing. This Court denied Applicant's Motion for Default against Respondent for lack of merit and failure to demonstrate any prejudice.

Newly Discovered Evidence Claim

This Court first finds that this Application for Post-Conviction Relief is dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. 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 that the statute of limitations shall apply to all applications filed after July 1, 1996. 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 February 14, 2008. The Applicant's appeal was denied and Remittitur was issued on February 10, 2010. The Applicant was therefore required to file the application before February 10, 2011. This Application was filed on March 28, 2012, which was after the statutory filing period had expired.

This Court further finds that the current Application is dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are 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 post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised 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 Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

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CLERK OF COURT
CHESTER CO. S.C.

The Applicant alleged that he could not have raised this claim previously because the evidence is newly discovered. 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 (1985).

As the burden is on the Applicant to prove he has met the requirements for newly discovered evidence, this Court finds that the Applicant failed to meet his burden of proof.

Applicant testified that he found a letter addressed to Applicant from Mario Ford dated January 15, 2008, in which Ford accepts responsibility for the crimes that Applicant had been convicted. Applicant testified that Mr. Ford was murdered two months after the letter was written. Applicant testified that he found the letter on April 24, 2011, while "scrounging around in the office getting Band-Aids and alcohol swabs," at the SCDC facility where he was located.

This Court does not find the testimony of the Applicant to be credible. This Court does not find it credible that Mario Ford wrote a letter to the Applicant dated one month prior to Applicant's conviction on the crimes 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 over two years later in 2011. Further, the fact that Mr. Ford was killed in 2008, but the postmark on the envelope is 2009 creates additional concern over the authenticity of the letter and envelope. This Court was presented with copies of the letter and envelope. (Applicant's Exhibits #4 and #3, respectively). Because of the authenticity concerns and issues with timing regarding the date of the letter, postmark, and alleged discovery date, this Court finds that the Applicant has failed to meet his burden of proof as to establishing a claim of newly discovered

A

evidence sufficient to overcome the statute of limitations and law against successive applications. This Court cannot find that this evidence would affect the outcome of a trial if another were to be held or that the evidence would even be admissible. Therefore, this application is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 must be denied and dismissed with prejudice.

This Court cautions 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 an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

Clifton B. Newman
Presiding Judge



ALAN WILSON
ATTORNEY GENERAL

CLERK OF COURT
CHESTER CO. S.C.

2013 DEC 30 P 1:04

FILED

December 18, 2013

The Honorable Clifton Newman
Presiding Judge
Post Office Box 516
Kingstree, SC 29556-0516

RE: James Bernard Curry v. State of South Carolina
2012-CP-12-0184

Dear Judge Newman:

I have received various letters and documents from Mr. Curry since he received a copy of the State's proposed Order of Dismissal in this matter. When I prepare the Orders, I utilize my written notes from the hearing; however, Mr. Curry indicates that the information in the proposed Order regarding the date of Lamario Ford's death is incorrect.

After reviewing the submitted document from Mr. Curry, reviewing my notes, and completing my own research, it does appear that Mr. Ford was killed in March 2009, not 2008. Therefore, I am submitting an amended proposed Order of Dismissal for your review with changes on page 6 to reflect the correct information. Please let me know if you need anything additional.

Sincerely,


Suzanne H. White
Assistant Deputy Attorney General

cc: James Bernard Curry, SCDC #186737

CC: Judge Newman

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

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. A Conditional Order of Dismissal was signed on October 1, 2012, by the Honorable Brooks P. Goldsmith. However, 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. A hearing into the matter was convened on August 6, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was initially represented by Tristan Shaffer, Esquire. However, at the hearing, Applicant requested and this Court allowed him to proceed *pro se*. 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. This Court also had before it a copy of the records of the Chester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the current Application and associated records and documents, Applicant's appellate records, 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 of the Clerk of Court for Chester County. The Applicant was indicted at the July 2007 term of the Court of General Sessions for Chester County 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). 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 Honorable Brooks P. Goldsmith sentenced the Applicant to confinement for twenty-five (25) years each for first degree burglary, armed robbery, and kidnapping, and ten (10) years 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. However, the Applicant indicated his desire to withdraw his appeal to pursue post-trial motions. After the Applicant indicated his desire to withdraw his appeal, the original appeal was 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 pre-trial motion, which was dismissed on October 13, 2009. The second appeal was dismissed by written Order on January 22, 2010. The Remittitur was sent on February 10, 2010. Applicant's second post-trial motion was then 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. 5th, 6th, and 14th Amendment violation;
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."

Respondent made its Return on or about December 16, 2010. An evidentiary hearing was convened at the Lancaster County Family Court on February 23, 2011. The Applicant was present and 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 application by written order filed April 20, 2011.

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

ALLEGATIONS

In his 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 has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant's Motions

Applicant waived the right to proceed with his Motion to Recuse Judge Goldsmith, which had been raised prior to the hearing. This Court denied Applicant's Motion for Default against Respondent for lack of merit and failure to demonstrate any prejudice.

Newly Discovered Evidence Claim

This Court first finds that this Application for Post-Conviction Relief is dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. 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 that the statute of limitations shall apply to all applications filed after July 1, 1996. 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 February 14, 2008. The Applicant's appeal was denied and Remittitur was issued on February 10, 2010. The Applicant was therefore required to file the application before February 10, 2011. This Application was filed on March 28, 2012, which was after the statutory filing period had expired.

This Court further finds that the current Application is dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are 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 post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised 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 Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant alleged that he could not have raised this claim previously because the evidence is newly discovered. 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).

As the burden is on the Applicant to prove he has met the requirements for newly discovered evidence, this Court finds that the Applicant failed to meet his burden of proof.

Applicant testified that he found a letter addressed to Applicant from Mario Ford dated January 15, 2008, in which Ford accepts responsibility for the crimes that Applicant had been convicted. Applicant testified that Mr. Ford was murdered in March 2009. Applicant testified that he found the letter on April 24, 2011, while "scrounging around in the office getting Band-Aids and alcohol swabs," at the SCDC facility where he was located.

This Court does not find the testimony of the Applicant to be credible. This Court does not find it credible that Mario Ford wrote a letter to the Applicant dated one month prior to Applicant's conviction on the crimes 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 over two years later in 2011. This Court was presented with copies of the letter and envelope. (Applicant's Exhibits #4 and #3, respectively). Because of the authenticity concerns and issues with timing regarding the date of the letter, postmark, and alleged discovery date, this Court finds 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. This Court cannot find that this evidence would affect the outcome of a trial if

another were to be held or that the evidence would even be admissible. Therefore, this application is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 must be denied and dismissed with prejudice.

This Court cautions 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 an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

Clifton B. Newman
Presiding Judge

James B. Curry # 186734
Lee C.I. Kershaw 1135
990 Wisacky Hwy.
Bishopville SC 29010

"agency mail"

Chief Justice Tol

The South Carolina Supreme Court of Appeals

P.O. Box 11330

Columbia, S.C. 29211

LEGAL MAIL ONLY