

PCR

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE D. GARRISON HILL

Case No.: 2012CP2307208

MARIO HINOJOS,)
)
PETITIONER,)
)
vs.)
)
STATE OF SOUTH CAROLINA)
)
RESPONDENT.)
_____)

NOTICE OF APPEAL

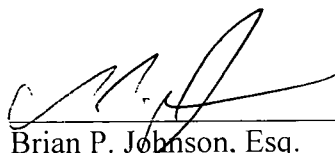
The Petitioner, Mario Hinojos, hereby appeals the Honorable D. Garrison Hill's order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

RECEIVED

MAY 19 2014

S.C. SUPREME COURT

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

Date: May 14, 2014
Other counsel of record: Karen Ratigan
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE D. GARRISON HILL

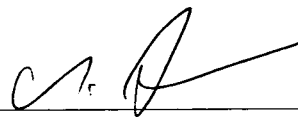
Case No.: 2012CP2307208

MARIO HINOJOS,)
)
 PETITIONER,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)
)

PROOF OF SERVICE

I, Brian P. Johnson, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

RECEIVED

May 14, 2014

MAY 19 2014

S.C. SUPREME COURT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2307208

IN THE COURT OF COMMON PLEAS

Mario Ramos Hinojos	State of South Carolina
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FILED-CLERK
 GREENVILLE
 PAUL B. WICK
 2014 APR 15 PM 5:01
 SUPERIOR COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff, <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Before the Court is Petitioner's motion to reconsider this Court's Order filed February 21st, 2014, which denied Petitioner's motion to reopen proceedings due to purported after-discovered evidence.

To obtain relief based upon a claim of after-discovered evidence, Petitioner 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). Upon thorough review of Petitioner's motion to reconsider and the attached exhibits, Applicant has failed to carry his burden of proof. First, Applicant has failed to prove that the evidence contained in the FBI file would most probably change the result of a new trial. Second, Applicant has not proven that such evidence could not have been discovered prior to trial in the exercise of due diligence. Third, Applicant has not proven that the evidence is material and is not merely cumulative or impeaching. Accordingly, Petitioner's motion to reconsider is DENIED.

This order ends does not end the case.

Additional Information for the Clerk: _____

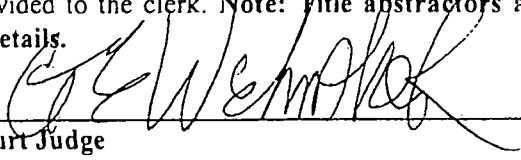
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


 Circuit Court Judge 2137 4/15/14
Judge Code Date
For Clerk of Court Office Use Only

4-15-14 4-15-14

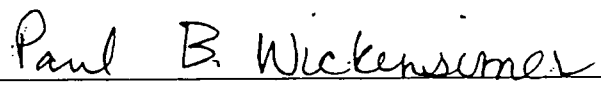
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro.se) as follows:

~~Mario Hinojos 301870 Lcc Correctional Institution 990
Wiscoky Hwy Bishopville, SC 29010~~
 Brian P. Johnson 522 North Church Street Greenville, SC
 29601

Karen Christine Ratigan PO Box 11549 Columbia, SC
 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Paul B. Wickensimer Greenville County Clerk Of
 Court - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Mario Ramos Hinojos, Jr.,)
 S.C.D.C. No. 301870,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-23-7208

FINAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2013 DEC 9 PM 2 42

jm

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its return on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated May 7, 2013 and filed May 14, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

The Applicant filed a motion for default. This Court ordered a hearing set on this motion and for counsel to be appointed to represent the Applicant. A hearing was held on August 30, 2013 before the Honorable Robin B. Stilwell. The Applicant was present and represented by Brian P. Johnson, Esquire. Judge Stilwell denied the motion for default by order filed August 30, 2013. Attached to this Final Order and incorporated herein by reference is a Certificate of

Service dated September 11, 2013, serving the Conditional Order of Dismissal upon the Applicant's attorney. This Court notes the Applicant's attorney has failed to submit a response to the Conditional Order of Dismissal. Out of an abundance of caution, however, this Court will address the pro se filings submitted prior to counsel's appointment.

In a document captioned "Motion to Amend" and filed May 17, 2013, the Applicant argues his trial counsel "failed to request the charge on murder v. manslaughter required by State v. King, 158 S.C. 251, 155 S.E. 409 (1930)." The Applicant argues trial counsel should have objected to the trial judge's jury charge.

In a document captioned "Reply" and filed May 21, 2013, the Applicant argues his appellate counsel "never advised nor explained to him of his right to PCR." The Applicant argues he has a right to counsel in this case. The Applicant argues that "deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." The Applicant argues he was unable to previously raise the issues in his current PCR application "due to the inability to adequately [sic] research the law." The Applicant argues the grand jury was improperly conducted and the trial judge did not have subject matter jurisdiction in his case. The Applicant argues he is entitled to belated appeal.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on May 12, 2004 and the South Carolina Court of Appeals dismissed the appeal on April 17, 2007. As this action was

filed on November 14, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980); see also Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court notes that – as addressed in the final order of dismissal from the Applicant's first PCR application – appellate counsel is not required to advise a defendant of post-conviction remedies. See Sutton v. State, 361 S.C. 644, 606 S.E.2d 779 (2004) overruled on other grounds by Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005).

This Court finds the Applicant's claim that the trial court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds the indictments for murder (2003-GS-23-2931, -2944) and assault and battery with intent to kill (2003-GS-23-2977) were true-billed and clearly adequate to provide notice of the charges the Applicant was facing. This Court finds the Applicant has failed to present any credible evidence that the grand jury proceedings were improper or that the trial judge did not have subject matter jurisdiction.

This Court finds the Applicant is not entitled to an appeal. The Applicant had an appeal from his trial. The Applicant – who represented himself on his first PCR application – failed to file an appeal from the order of dismissal in that case. This Court notes the final paragraph of that order informed the Applicant of the appeal deadline and procedure. This Court finds the

Applicant was aware of his appellate rights and chose not to pursue them.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 3rd day of Dec., 2013.

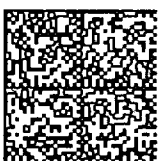


D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

Law Office of Brian P. Johnson, LLC
522 North Church Street
Greenville, SC 29601

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211



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