

PCR

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THE STATE OF SOUTH CAROLINA

MAY 29 2014

In the Supreme Court

S.C. SUPREME COURT

Appeal from Sumter County

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No : 2013-CP-43-1451

Lavar P. Sanders Appellant

S.C.D.C. # 259354

v.


The State Respondent

NOTICE OF APPEAL

Lavar P. Sanders appeals his denial for post-conviction relief in this case. The order of dismissal was signed by the Honorable R. Ferrell Cothran, Jr., May 8, 2014, filed May 13, 2014, which I, Lavar P. Sanders, received on May 16, 2014.

Other Counsel on Record :

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3970



Lavar P. Sanders #259354
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

PRO SE APPELLANT

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2014 MAY 13 AM 11:05

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Lavar P. Sanders, #259354

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2013-CP-43-1451

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 11, 2013. The Respondent made its return on October 17, 2013, requesting the application be summarily dismissed based upon statute of limitations, successiveness, and *res judicata*.

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 signed October 22, 2013 and filed October 25, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 7, 2013, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Response In Opposition to respondent's Motion to Dismiss and to the Conditional Order of Dismissal" and filed on November 6, 2013, the Applicant argues that he was "prevented from raising new grounds for relief in his previous application or at the hearing because he did not have possession of his transcript." Applicant further argues the application is not barred by the statute of limitations "pursuant to the discovery

rule, Applicant filed the Application within one year of him discovering the new grounds for relief found in the transcript.” Additionally, Applicant argues that he is not barred by the doctrine of *res judicata* because he is raising new allegations of ineffective assistance of counsel.

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. Applicant was convicted of possession with intent to distribute cocaine within one half mile of a park and trafficking cocaine ten grams or more but less than twenty eight grams. This Court notes that Applicant was represented by counsel during his evidentiary hearing of his first PCR application (2012-CP-43-180). Applicant was given the opportunity to raise all grounds of ineffective assistance of counsel during this evidentiary hearing.

Applicant’s claim that his new allegations of ineffective assistance of counsel amounts to newly discovered evidence is without merit. An Applicant 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.

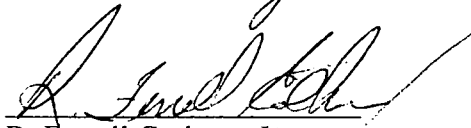
Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. Therefore, this Court finds that this allegation, and this application, must be dismissed.

Additionally, this Court finds that Applicant’s allegation is barred by the doctrine of *res judicata*. Applicant has had every opportunity to raise any and all claims of ineffective assistance of counsel during his evidentiary hearing based off of his first PCR application (2012-CP-43-180).

This Court notes the Applicant was convicted and sentenced on March 5, 2009. Applicant's filed a notice of appeal and the remittitur was issued on June 2, 2011. As this action was filed on August 14, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003).

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 8 day of May, 2014.



R. Ferrell Cothran, Jr.
Circuit Court Judge
Third Judicial Circuit Court

Manning, South Carolina.



RECORDED

2014 MAY 13 AM 11:10

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

May 12, 2014

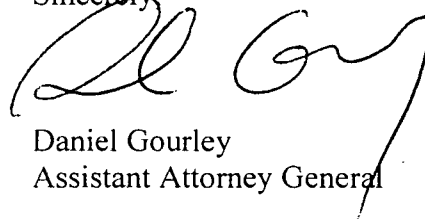
The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

Re: Lavar P. Sanders, #259354 v. State of South Carolina
2013-~~GS~~-43-1451
CA

Dear Mr. Campbell:

Enclosed please find the original **Final Order of Dismissal**, signed by The Honorable R. Ferrell Cothran, Jr., in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,



Daniel Gourley
Assistant Attorney General

DG/ck
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECORDED

2014 MAY 3 CASE NO.: 2013-CP-43-1451

LAVAR P. SANDERS, #259354

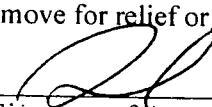
JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Lavar P. Sanders, #259354, Bar No. _____ Address: Lieber Correctional Institution Ridgeville, SC 29472 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____		Court Reporter Needed: <input type="checkbox"/> YES/ <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		May 5, 2014 Date submitted	
SECTION III: Motion Fee			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			

Lavar P. Sanders # 259354

Lieber Corr. Inst. ~~WC~~ WC/171

P.O. Box 205

Ridgeville, SC 29472

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MAY 23 2014

MAILROOM
LIEBER CI

The Supreme Court of South Carolina

P.O. Box 11330

Columbia, SC 29211

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