

PCR

Raqib Abdul Alemin # 264465
MCI / 4-B-151
386 Redemption Way
McCormick, S.C. 29899

May 22, 2014

RECEIVED

MAY 29 2014

S.C. SUPREME COURT

Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

Dear Shearouse,

Enclosed please find the following: Notice of Appeal, Memorandum in support, Initial Brief and proof of service. Please file and docket notation with this Court. Attach is an appendix.

Best regards



Raqib Abdul Alemin

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM RICHLAND COUNTY

MAY 29 2014

Court of Common Pleas

L. Casey Manning, Circuit Court Judge **S.C. SUPREME COURT**

Case No. 2012-CP-400-7884

Raqib Abdul Alamin _____ Appellant,

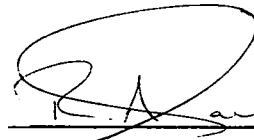
v.

State of South Carolina _____ Respondent.

NOTICE OF APPEAL

Raqib Abdul Alamin, #264465 appeals the Honorable L. Casey Manning order denying post-conviction relief to the Respondent. Unsigned pro-se litigant received notice of entry of the Order on May 13, 2014. A copy of the order on appeal is attached to this notice.

Date: May 22, 2014



Raqib Abdul Alamin #264465
ALCF/ 4-B-151
386 Redemption Way
McCormick, S.C. 29899

G.

STATE OF SOUTH CAROLINA
In the Supreme Court

_____ X

Raqib Abdul Alemin #264465

Appellant,

CERTIFICATE OF SERVICE

v.

State of South Carolina

Case No. 2012-CP-400-7887

Respondent.

_____ X

The undersigned, Appellant hereby certifies he has served true and correct copy of the enclosed Notice of Appeal and Memorandum upon S.C. Supreme Court, 1231 Gervais Street, P.O. Box 11330, Columbia, S.C. 29211 by placing aforesaid copy in a first-mail, this 22 day of May, 2014,

cc: Megan E. Harrigan
Assistant Attorney General



Raqib Abdul Alemin #264465

MC2 / 4-B-151

386 Redemption Way

McCormick, S.C. 29899

:



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007884

Raqib Abdul Al Amin

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Consult); 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 _____

RECEIVED
MAY 13 2014
RICHLAND COUNTY
CLERK OF COURT
9:08 AM

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

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 May 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Raqib Abdul #264465 Al Amin

Megan E. Harrigan

Raqib Abdul #264465 Al Amin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Raqib Abdul Al-Amin, #264465,

2012-CP-40-07884

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2014 MAY 13 PM 3:06
JEANETTE W. ABRIDGE
C. C. P. & G. S.

This matter comes before the Court pursuant to an application for post-conviction relief filed November 28, 2012 and amended on January 28, 2013. Respondent made its Return and Motion to Dismiss on March 3, 2013, requesting that the application be summarily dismissed as beyond the statute of limitations pursuant to S.C. Code Ann. § 16-27-45 and as successive to his two prior post-conviction relief applications pursuant to S.C. Code Ann. § 16-27-90. 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 March 7, 2013 and filed March 11, 2013, provisionally denying and dismissing this action as barred by the statute of limitations and as successive to his two previous post-conviction relief actions. This Court gave Applicant twenty 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 is an Affidavit of Service dated April 2, 2013, serving the above-mentioned Conditional Order of Dismissal on Applicant. Applicant responded to the Conditional Order of Dismissal with a document captioned "Applicant's Traverse/Objection to Respondent Return and Motion to Dismiss and Conditional Order and 'Why it Should Not Become Final'" filed March 26, 2013. Applicant asserts that this latest and third application should not be summarily dismissed as successive or filed beyond the

statute of limitations because it is filed based on a claim of after-discovered evidence. Applicant asserts that he received an affidavit from Daniel Brown, who he characterizes as a "physical eye witness" on May 17, 2011 and that this affidavit amounts to after-discovered evidence pursuant to S.C. Code Ann. § 17-27-45(c). Applicant asserts that he filed his second post-conviction relief action (C.A. No. 2011-CP-40-03663) within a year of discovery of this affidavit and that this second application was improperly dismissed.

This Court finds that Applicant has failed to establish sufficient reason why this application should not be dismissed for several reasons. First, this Court disagrees with Applicant that this affidavit from Mr. Brown satisfies the tenants of after 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). Applicant has not shown that the alleged evidence meets the requirements for after discovered evidence. Most importantly, Applicant has not met his burden of showing that the "new evidence" offered is "material to the issue of guilt or innocence" and would "change the result if a new trial was had." Id. Accordingly, this Court finds that the application must be denied and dismissed with prejudice.

Second, this Court finds that Applicant has failed to show why this application is not barred by the statute of limitations as set forth in S.C. Code Ann. § 17-27-45. Applicant asserts that the application is timely according to S.C. Code Ann. § 17-27-45(c) because it is filed within

one year of the discovery of evidence of material fact not previously presented to the court. However, by Applicant's own admission, the affidavit at issue was discovered on May 17, 2011, which is more than one year before the date this application was filed on November 28, 2012. Applicant's assertions that his second application for post-conviction relief (C.A. No. 2011-CP-40-03663) was filed within one year of discovery and improperly dismissed is not a sufficient reason as to why this application should not be dismissed pursuant to S.C. Code Ann. § 17-27-45. This is an issue that could have been raised on appeal, not by the filing of another post-conviction relief application. Therefore, this Court finds that this application must be denied and dismissed with prejudice.

Third, this Court finds that Applicant has failed to show why this application should not be dismissed as successive to his two prior post-conviction relief applications. By Applicant's own admission, his second post-conviction relief action (C.A. No. 2011-CP-40-03663) was filed based on after discovered evidence stemming from the same affidavit. This claim was already presented to the Court and dismissed. Therefore, this third application filed on the same grounds is clearly successive in nature and must be denied and dismissed with prejudice.

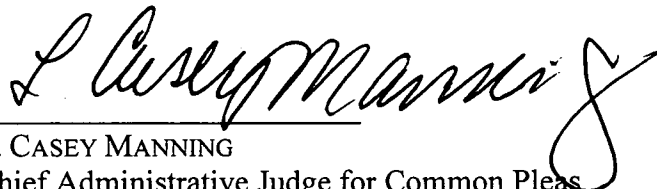
Fourth, this Court finds that Applicant's assertion that this application should not be dismissed based on the discovery of Brodnax is incorrect. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013) is a Court of Appeals decision decided on January 9, 2013, nearly thirteen years after Applicant's trial. Brodnax is not retroactive and therefore has no bearing on Applicant's case. This Court finds that this application must be denied and dismissed with prejudice.

Based on the foregoing reasons, this Court finds that this application for post-conviction relief must be denied and dismissed in full, with prejudice.

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

This Court hereby notes that if Applicant wishes to appeal, he must file and serve a Notice of Appeal within thirty days of service on this Order to secure appellate review. See Rule 203, SCRAR. Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 5 day of May, 2014.



L. CASEY MANNING
Chief Administrative Judge for Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina

5-4-11 MCT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Off. Lee (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE

COUNTY OF

On this 2nd day of April, 2013, I served the signed Conditional Order of Dismissal on Inmate **Raquib A. Al-Amin**, SCDC Inmate No. 264465, by delivering personally and leaving a copy of the same at Perry Correctional Institution, Pelzer, South Carolina. Deponent is not a party to this action.

s/ Col J. Lee

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 2nd day of April, 2013
Patricia Buchanan (L.S.)

Notary Public for South Carolina

My Commission Expires: 4-26-2020

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Perry Correctional Institution, Pelzer SC, Greenville County, South Carolina, this 2nd day of April, 2013.

s/ Raquib Al-Amin

Inmate Signature
SCDC No. 264465

Ka... ..

MEI / 4-B-151

386 Redemption Way

McCormick, S.C. 29819

S.C. Supreme Court

Daniel E. Shearouse

Clerk of Court

Post Office Box 11330

Columbia, S.C. 29211

