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SOUTH CAROLINA
COURT OF APPEALS
1015 SUMTER ST., BOX 11629
COLUMBIA S.C. 29211

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JUN 30 2014

SC Court of Appeals

JACK L. BRISBANE #317451)
(INMATE))

VS.

NOTICE OF APPEAL

STATE OF SOUTH CAROLINA)

CASE NUMBER#
2014-CP-38-00294

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

PRO-SE LITIGANT

BRIEF

THE STATE SENT ME A CONDITIONAL ORDER OF DISMISSAL STATING THAT MY POST-CONVICTION RELIEF APPLICATION WAS NOT FILED IN 1 YEAR PURSUANT TO SC. CODE OF LAWS TITLE 17. SECTION 17-27-45(a), HOWEVER I FILED THIS APPLICATION BASED UPON SECTION §17-27-45(C) BASED UPON NEWLEY DISCOVERED EVIDENCE. STATE ALSO ALLEGED THAT I FILED EXCESSIVE APPLICATIONS FOR PCR. I ONLY FILED ONE POST-CONVICTION RELIEF APPLICATION. THE CONDITIONAL ORDER OF DISMISSAL WAS ISSUED AND SENT TO ME BY J. CLAYTON MITCHELL, THIS ORDER THAT WAS CONDITIONAL WAS SENT TO ME WITH A 20 DAYS LIMITATION TO RESPOND FROM THE DATE OF SERVICE, HOWEVER THIS ORDER WAS NOT SIGNED NOR DATED BY THE ADMINISTRATIVE JUDGE (CHIEF) DIANE S. GOODSTEIN, WHICH MAKES THE CONDITIONAL ORDER INVALID AND OF NO JUDICIAL AFFECT ACCORDING TO SOUTH CAROLINA CODE OF LAWS. THIS ALSO VIOLATES MY DUE PROCESS RIGHTS OF THE 14TH AMENDMENT. I HAVE ENCLOSED A COPY OF THIS CONDITIONAL ORDER OF DISMISSAL AS MATERIAL EVIDENCE OF THIS JUDICIAL VIOLATION.

THE CONDITIONAL ORDER IS ALSO SUBMITTED WITH PREJUDICE DUE TO THIS VIOLATION SECTION III, UNDER THE CONCLUSION OF THIS CONDITIONAL ORDER STATES: THE COURT INTENDS TO DISMISS THIS APPLICATION WITH PREJUDICE UNLESS THE APPLICANT PROVIDES SPECIFIC REASONS, FACTUAL OR LEGAL, WHY THE APPLICATION SHOULD NOT BE DISMISSED IN ITS ENTIRETY. THIS IS CONTRADICTION TO EARLIER IN THIS CONDITIONAL ORDER IT STATED THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT.

NEWLY DISCOVERED EVIDENCE

I FILED THE CLAIM OF SECTION §17-27-45(C) OF THE UNIFORM POST-CONVICTION PROCEDURE ACT, WHICH STATES THAT THE APPLICANT HAVE 1 YEAR FROM THE DATE OF THE ACTUAL DISCOVERY OF THE EVIDENCE TO FILE A PCR. AND NOT FROM THE ACTUAL DATE OF THE CONVICTION. THE COURTS HAS BASED THIS ORDER ON A FACE VALUE RULE, AND NOT ON A SC CODE ANN RELEVANT FACTS AND FINDING AND CONCLUSION OF LAW.

14TH AMENDMENT

DUE PROCESS STATES THAT THERE MUST ALSO BE EQUAL PROTECTION OF LAW AND THE COURTS MUST RENDER FAIR AND EQUAL JUDICIAL REVIEW WHEN IT COMES TO COURT APPLICATIONS AND LITIGANTS. THE COURTS CANNOT MEASURE A PRO-SE LITIGANT TO THE SAME MEASURE AS A LICENSE LAWYER. FOR THE PURPOSE OF JUSTICE I SUBMIT THE FOLLOWING APPEALS.

RESPECTFULLY SUBMITTED,

SIGNATURE

Jack Brisbane

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Jack L. Brisbane, #317451,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-00294

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed January 30, 2014.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the July 2010 term of the Orangeburg County Grand Jury for First Degree Burglary (2010-GS-38-0916) and Assault and Battery With Intent to Kill (ABWIK) (2010-GS-38-0917). Applicant was represented on the charges by Jillian D. Ullman, Esquire. Applicant pleaded guilty to the lesser included offense of Second Degree Burglary and to ABWIK, as indicted, on October 13, 2011 before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to eleven (11) years imprisonment on both charges to be served concurrently as recommended by the State. Applicant did not appeal his plea or sentence.

CURRENT APPLICATION

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons verbatim:

1. Ineffective assistance of counsel
2. Coerced into guilty plea
3. Malicious prosecution

4. Newly discovered evidence

Applicant then filed a document captioned "Petition for Admissions to Amend Post/Conviction Application" on March 10, 2014. In that document, Applicant states verbatim, "I the Petitioner filed an Applicant for post-conviction relief application in this Court, however since the filing of such, I discovered new evidence that needs to be amended to the application." Applicant goes on to cite S.C. Code § 17-27-90, the applicable provision regarding newly discovered evidence.

Applicant then sent a letter to Respondent captioned "Petition for Service and Execution of Post-Conviction Relief Application" which was received on April 22, 2014, asking the Respondent to respond to the application.

Before this Court are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's PCR application, and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds that this Application for post-conviction relief must be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, *et. seq.* 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 pleaded guilty to the offenses he challenges on October 13, 2011. Applicant did

not appeal his conviction, so he was therefore required to file his application on or before **October 15, 2012**. This application was filed on January 30, 2014, which was over a year after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Newly Discovered Evidence

Furthermore, this Court finds that Applicant's claims of newly or after discovered evidence must be dismissed, as Applicant has failed to set forth any specific allegations of the nature of the evidence. 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.

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application

with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 1th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this _____ day of _____, 2014.

DIANE S. GOODSTEIN
Chief Judge for Administrative Purposes
First Judicial Circuit

_____, South Carolina



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

May 16, 2014.

The Honorable Diane S. Goodstein
Chief Administrative Judge for the First Judicial Circuit
5200 East Jim Bilton Boulevard
Post Office Box 234
St. George, South Carolina 29477

Re: Jack L. Brisbane, #317451 v. State of South Carolina
2014-CP-38-00294

Dear Judge Goodstein:

Enclosed, please find a proposed original **Conditional Order of Dismissal** in the above-captioned case. If this Order meets with your approval, please sign it and return it to our office so that I can file it with the Orangeburg County Clerk of Court.

Sincerely,

J. Clayton Mitchell
Staff Attorney

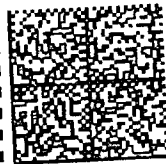
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Enclosures:


cc: Jack L. Brisbane, #317451

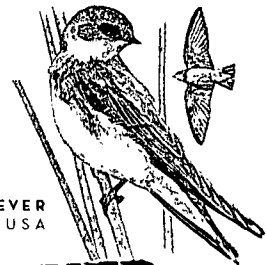
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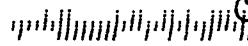
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MANNING CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



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