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June 30, 2014

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Jeffrey Horan #337449 v. State of South Carolina
Case No.: 2012-CP-26-3085

RECEIVED

JUL 02 2014


S.C. SUPREME COURT

Dear Clerk of Court:

Enclosed please find an original and one copy of a Notice of Appeal in the above referenced matter. If you would, please file the Notice of Appeal and return a clocked copy to me in the envelope provided.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/dke

cc: Joshua L. Thomas, Esquire
Horry County Clerk of Court
Kimberly McCall
Jeffrey Horan

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM HORRY COUNTY
In The Court of Common Pleas

Honorable George C. James, Jr.,
Common Pleas Judge of the Fifteenth Judicial Circuit

Case No.: 2012-CP-26-3085

Jeffrey Horan, #337449,

Petitioner,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable George C. James, Jr. dated June 6, 2014, filed June 11, 2014 and received by Petitioner on June 20, 2014.

June 30, 2014



Tristan M. Shaffer, Esq.
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(843) 848-6708 Phone
(843) 848-6709 Fax
Attorney for Appellant

Respondent's Attorney:
Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

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JUL 02 2014

S.C. SUPREME COURT

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM HORRY COUNTY
In The Court of Common Pleas

Honorable George C. James, Jr.,
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Case No.: 2012-CP-26-3085

Jeffrey Horan, #337449,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Deborah Evans, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Jeffrey Horan #337449
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

Horry County Clerk of Court
1300 Second Avenue
Conway, SC 29526

Kimberly McCall
Appellate Defense
1330 Lady Street
Columbia, SC 29201



Deborah Evans
Paralegal to Tristan M. Shaffer

July 1, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Jeffery Horan, #337449,
Applicant,

) Case No. 2012-CP-26-3085
)

v.

) **FINAL ORDER OF DISMISSAL**
)

State of South Carolina,

Respondent.

RECORDED & INDEXED
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Horry County

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed April 17, 2012. The Court convened a hearing into the matter on March 19, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

The Court heard arguments from counsel for both parties. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Respondent's return and motion to dismiss, the conditional order of dismissal, and the exhibits entered into evidence. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In July 2009, the Horry County Grand Jury indicted Applicant for murder (2009-GS-26-2814). Stuart M. Axelrod, Esquire, represented Applicant. On October 15, 2009, Applicant pled guilty to voluntary manslaughter pursuant to a negotiation

with the State for a sentence of thirty (30) years. The Honorable Thomas A. Russo accepted the negotiations and imposed a thirty (30) year sentence. As part of the negotiations, the State dismissed all other pending charges against Applicant, including charges for: first-degree burglary (2009-GS-26-2813); trafficking in cocaine, 10-28 grams (2009-GS-26-2514); and habitual traffic offender (2009-GS-26-2510). Applicant did not appeal his plea or sentence.

Applicant filed his first PCR application on May 18, 2010. In that application, Applicant alleged he was being held in custody unlawfully based on ineffective assistance of counsel and an involuntary guilty plea. The Honorable Steven H. John convened a hearing into the application on November 15, 2010. Applicant was present at the hearing and represented by Paul Archer, Esquire. At the hearing, Applicant voluntarily withdrew his application. Judge John accepted the withdrawal, and issued an order dismissing the application on November 16, 2010.

II. CURRENT APPLICATION

In his current application, Applicant alleges the following grounds for relief:

1. "Newly discovered evidence \ involuntary plea"
2. "improper indictment"
3. "Ineffective Assistance of Counsel"

Respondent made a timely return and motion to dismiss on or about June 6, 2012, asking the court to dismiss the application as untimely and successive. Pursuant to this motion, Judge John issued a Conditional Order of Dismissal, filed on June 21, 2012, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Applicant filed a *pro se* response to



the conditional order on July 9, 2012. In light of this response, Judge John ordered counsel appointed and the matter set for a hearing on Respondent's motion to dismiss.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety, including the evidence presented at the hearing, and has heard the arguments presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At the hearing, Applicant argued he should be allowed to proceed with a successive and untimely application because the withdrawal of his first application was not voluntary. Applicant's counsel proffered that Applicant and his family could testify the family members of the victim were seated behind Applicant in court on the day of his withdrawal. Applicant alleges those family members made comments to Applicant which induced him to withdraw his original application. Applicant requested an evidentiary hearing to determine Applicant's reasons for withdrawing and what advice prior PCR counsel gave regarding the withdrawal. In response, Respondent stipulated Applicant's testimony and his family's testimony would be consistent with the allegations contained in the application and attached affidavits. Respondent then entered into evidence Judge John's order dismissing the prior application. Respondent argued the order demonstrates Applicant voluntarily withdrew his application with full knowledge of the consequences, and is therefore precluded from filing a second application. Respondent submitted further testimony was unnecessary to resolve the issue of whether the application was knowingly and voluntarily withdrawn.

The Court finds Applicant has not met his burden to show he is entitled to a successive application after there has already been a finding the prior application was freely and voluntarily

withdrawn. Applicant withdrew his first PCR application on November 15, 2010. Judge John entered an order dated November 16, 2010, noting the withdrawal and dismissing the PCR claim with prejudice. In his order, Judge John noted he questioned Applicant about the withdrawal, and he concluded Applicant was "aware of all his rights and with full knowledge of those rights and the facts of his application, he wishes to withdraw the application." Furthermore, if the victim's family members were sitting behind Applicant and pressuring him to withdraw his application, their behavior should have been brought to the attention of his lawyer or Judge John at the time. Furthermore, Applicant did not move for reconsideration, nor did he appeal.

The Court also finds Applicant has not demonstrated a further evidentiary hearing is necessary to resolve the question of whether he is entitled to a successive application. In this regard, Applicant's reliance on Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977), and McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), is misplaced. In Delaney, the applicant appealed directly from the dismissal of his first PCR application and the Supreme Court simply held that when the PCR allegations were not conclusively refuted by the lower court record, there must be a hearing in the lower court to resolve questions of fact. Delaney, 269 S.C. at 556, 238 S.E.2d at 679. Similarly, the Supreme Court ruled in McCoy that the circuit judge erred in summarily dismissing the applicant's claims without a hearing where the record did not conclusively refute the claims. McCoy, 401 S.C. at 370, 737 S.E.2d at 627.

In contrast to those cases, the Court here has held a hearing where evidence was presented. Applicant proffered his claims the victim's family's comments pressured him to withdraw his first application. Affidavits to that effect were prepared by Applicant's family and attached to his application. Respondent stipulated to the substance of Applicant's claims, but

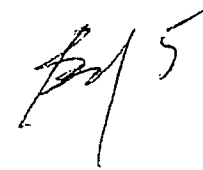
introduced a certified copy of Judge John's order dismissing the first application. In the Court's view, further exploration of this issue is unnecessary. The record conclusively demonstrates Applicant withdrew his prior application with full knowledge of the consequences. Applicant cannot simply make an allegation that he was coerced into withdrawing his first application and get a second bite at the apple.

Furthermore, Applicant filed this successive application on April 17, 2012, more than one year after his conviction was final (October 15, 2009), and more than one year after he withdrew his first application (November 15, 2010). Aside from the application being successive, it was filed well beyond the expiration of the statute of limitations, even if the statute began to run on the date of withdrawal. See S.C. Code Ann. §17-27-45(c); Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not shown a sufficient reason why the application is not untimely and successive and why the conditional order should not become final. Therefore, the Court grants Respondent's motion and hereby denies and dismisses this action with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

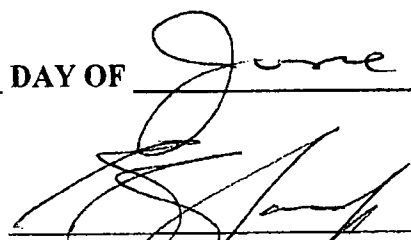


Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Correction to complete service of his sentence.

IT IS SO ORDERED THIS 6 DAY OF June, 2014.



THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge

Sumter, South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
)
)
JEFFERY HORAN, #337449)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS


2012-CP-26-3085

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Final Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 19TH day of June, 2014.


Norma Bigbee, Legal Assistant
For Respondent

AXELROD

& ASSOCIATES
ATTORNEYS AT LAW

604 Sixteenth Ave. North ♦ Myrtle Beach, SC 29577

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211



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