

No 2014-001732

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AUG 27 2014

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Anthony Jesus Johnson, )  
a/k/a Maurice Jesus Johnson, )  
S.C.D.C. No. 261882, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
2013-CP-23-4946

S.C. SUPREME COURT

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENHAGEN  
2014 JUN 19 AM 10 10

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 13, 2013. The Respondent made its return on March 11, 2014, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, and the doctrine of 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 March 13, 2014 and filed April 3, 2014, 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 April 16, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Motion for Summary Judgment" and filed April 2, 2014, the Applicant argues he is entitled to summary judgment because the Respondent's return

and motion to dismiss did not address his allegation of newly-discovered evidence.

In a document captioned “‘Second’ Notice and Motion to Amend PCR” and filed April 15, 2014, the Applicant attaches a second affidavit that is purported to be from Constance Neal.

In a document captioned “Applicant’s Return to Respondent’s Conditional Order of Dismissal and Return” and filed April 30, 2014, the Applicant argues he could not have made his present arguments in his prior PCR applications. The Applicant argues these issues “has never been fully adjudiated [sic] on the merits in this current PCR.” The Applicant argues “there are clear FACTS that would establish an exception to the statute of limitations, successive and res judicata” and that he “is entitled to the benefit of the discovery rule.”

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 November 9, 2004 and the South Carolina Court of Appeals dismissed the appeal on January 11, 2008. As this action was filed on September 13, 2013, 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 fourth 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). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on February 23, 2010. See 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.’”).

A handwritten signature in black ink, appearing to be the initials 'JL' or similar, written in a cursive style.

This Court finds the Applicant's allegation of newly-discovered evidence is without merit. This Court finds the Applicant's alleged evidence has failed to prove any of the five (5) required elements of newly-discovered evidence. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). This Court further finds that the Applicant raised the issue of whether witness Tyrone Thomas was intimidated at his first PCR hearing. Extensive testimony was taken from the Applicant and his two trial attorneys and the issue was addressed in the order of dismissal. This issue was, therefore, known to the Applicant at that time and he cannot now state this is newly-discovered evidence.

**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 17 day of June, 2014.



Letitia H. Verdin  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

