

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Robert L. Geter, #282714,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-03804

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 SEP 29 AM 11:39
JEANNETTE W. TROBERT
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 1, 2013. Respondent made its Return and Motion to Dismiss December 2, 2013, requesting that the Application be summarily dismissed. 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 filed December 5, 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 December 18, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Opposition to Conditional Order of Dismissal," and filed on January 6, 2014, Applicant asserts there is evidence that has recently been discovered warranting an evidentiary hearing. Applicant bases these allegations on a report from an investigator hired by Applicant's family. Applicant main contention is that the victim of the crimes did not have an insurance policy with Nationwide Insurance.¹ Applicant argues that since the insurance company has no record of the victim's policy in their records over ten (10) years

¹ Applicant was convicted of armed robbery, burglary, and assault and battery of a high and aggravated nature. Applicant robbed the victim in his home of proceeds the victim recently received from a car insurance policy.

after the incident occurred that he is entitled to a new trial. Applicant also alleges prosecutorial misconduct in that the State presented witnesses that offered perjured testimony by presenting evidence that Applicant stole insurance proceeds from the victim.

This Court finds that Applicant's claims of newly or after discovered evidence must be dismissed. 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). First, this alleged evidence is of no consequence to Applicant's convictions and would not change the result of the trial. Applicant is only challenging the property that was stolen from the victim. He is not challenging the acts he and codefendants committed. Applicant entered the victim's home with the intent to deprive the victim of property and did so with a firearm that was discharged in victim's direction. Second, Applicant could have undertaken an investigation into the stolen insurance proceeds before going to trial. Applicant states no reason why he was unable to initiate an investigator into the proceeds. Finally, the alleged evidence is not material to the issue of guilt. Applicant was convicted of armed robbery, first degree burglary and assault and battery of a high and aggravated nature. The type of insurance policy and insurance company that issued the proceeds stolen from the victim are inconsequential to Applicant's convictions as it has no bearing on any elements of the charges. 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.

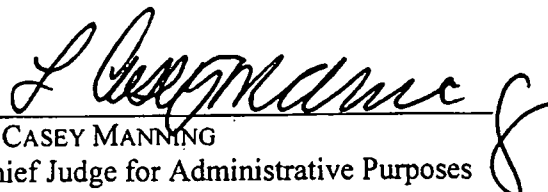
Accordingly, this Court finds the current application fails to state a claim which creates any genuine issue of material fact for this Court to consider.

This Court has reviewed Applicant's responses to the Court's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court further finds that Applicant's current application is successive to Applicant's previously applications and that Applicant's current application was filed outside the statute of limitations.

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

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 22 day of September, 2014


L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 787 - Columbia, South Carolina 29221

MA S

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Eubruke (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 Richland)

On this 18 day of December, 2013, I served the signed Conditional Order of Dismissal on Inmate Robert L. Geter, SCDC Inmate No. 282714 by delivering personally and leaving a copy of the same at Kershaw Correctional Institution, Kershaw South Carolina. Deponent is not a party to this action.

s/ Eubruke

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

This 18th day of December, 2013
Angela J. Mason (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/18/14

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Kershaw Correctional Institution, Kershaw, Hareaster County, South Carolina, this 18 day of December, 2013.

s/ Robert Geter
Inmate Signature
SCDC No. 282714

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2013CP4003804

Robert L #282714 Geter

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. Nonsuit);
 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 _____

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 29 September 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Robert L #282714 Geter

Megan E. Harrigan

Robert L #282714 Geter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

