

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Gary Lane Prewitt, #217575,)
Applicant,)

2014-CP-36-0125

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
NEWBERRY COUNTY
2014 OCT 1 AM 9 57
JACKIE S. BENTON
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 6, 2014. The Respondent (the State) made its Return and Motion to Dismiss on April 10, 2014, 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 dated May 15, 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 June 25, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Return to Conditional Order of Dismissal," received by the Respondent on June 30, 2014, the Applicant argues his case should not be summarily dismissed because he claims he has evidence which he discovered in March 12, 2013 at his Rule 29(b) SCCrimP hearing where an officer testified there was no confidential informant used in Applicant's case. He also

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alleges in his response that at his trial. first PCR hearing on March 19, 1996 and his second PCR hearing there was evidence that a confidential informant was used in his case.

This Court has reviewed the Applicant's response to the State's motion to dismiss 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.

Under S.C. Code Ann. § 17-29-45(c):

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter **within one year** after the date of actual discovery of the facts by the applicant or **after the date when the facts could have been ascertained by the exercise of reasonable diligence.** (emphasis added)

Applicant alleges that he just discovered this information concerning the confidential informant during his Rule 29(b) SCRCrimP hearing in 2013. However, this information would have been in existence before and during his trial and certainly before and during his PCR hearings. By the exercise of reasonable diligence, Applicant, either through counsel or by himself, could have contacted law enforcement, demanded/subpoenaed a copy of his file, and discovered this information.

Additionally, this application is successive to his prior PCR cases. This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which

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for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.


Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

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. The 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 16 day of September, 2014.



Donald B. Hocker
Presiding Judge
Eighth Judicial Circuit

Clemens, South Carolina.

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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 Officer Armet Cole (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 25th day of June, 2014, I served the signed Conditional Order of Dismissal on Inmate Gary Prewitt, SCDC Inmate No. 217575 by delivering personally and leaving a copy of the same at Lieber Correctional Institution, Ridgeville, South Carolina. Deponent is not a party to this action.

Armet Cole
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 6th day of August, 2014
Judith Bryant (L.S.)
Notary Public for South Carolina

My Commission Expires: May 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, Lieber Correctional Institution, Ridgeville, Dorchester County, South Carolina, this 25th day of June, 2014.

[Signature]
Inmate Signature
SCDC No. 217575

List case number here
2014-CP-36-0125

FILED
NEWBERRY COUNTY
2014 OCT 1 AM 9 57
JACKIE S. POWERS
CLERK OF COURT

RECEIVED

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FORM 4

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

S.C. Supreme Court

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3600125

Gary Lane Prewitt

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; 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

Conditional Order of Dismissal

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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.

S/ Donald B Hocker
Circuit Court Judge

05/15/2014
Date

Judge Code
For Clerk of Court Office Use Only

This judgment was entered on **June 2, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **June 5, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Gary Lane Prewitt #217575 Lieber Corr. Inst, WB 150 PO
Box 205 Ridgeville, SC 29472,

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowers (jt)

Court Reporter

Jackie S Bowers - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF NEWBERRY)
)
)
 Gary Lane Prewitt, #217575,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

RECEIVED

2014-CP-36-0125 NOV 10 2014

S.C. Supreme Court

**CONDITIONAL ORDER
 OF DISMISSAL**

NEWBERRY COUNTY
 CLERK OF COURT
 FILES
 JAMES S. SCOTT
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This matter comes before this Court by way of an application for post-conviction relief filed March 6, 2014. The State made its Return and Motion to Dismiss on April 10, 2014.

PROCEDURAL HISTORY

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the November 1994 term of the Newberry County Grand Jury for first degree burglary, grand larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime (94-GS-36-616). He was represented by Ray Wicker, Esquire. On January 19, 1995, the Applicant underwent trial by jury pursuant to which he was found guilty of first degree burglary, petit larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. He was sentenced by the Honorable E.C. Burnett, III, to confinement for a period of life for first degree burglary, thirty days for petit larceny, twenty (20) years for assault and battery with intent to kill and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did not appeal his conviction or sentence.

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1995-CP-36-135

The Applicant subsequently filed his first application for PCR on October 5, 1995. On March 19, 1996, an evidentiary hearing was held before the Honorable Edward B. Cottingham at which the Applicant was present and was represented by Robert Lake, III. By Order dated July 8, 1996, Judge Cottingham denied and dismissed the Applicant's application.

A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On September 10, 1997, the South Carolina Supreme Court denied the Petition.

4:98-2621-17BE

Thereafter, on September 8, 1998, the applicant filed a petition for a federal writ of habeas corpus. On May 10, 1999, the Honorable Robert S. Carr issued his report and recommendation indicating that the Applicant's petition be denied and dismissed. On September 30, 1999, the honorable Joseph F. Anderson, Jr. adopted Judge Carr's recommendation and dismissed the Applicant's petition. The Applicant appealed the order of the District Court to the Fourth Circuit Court of Appeals. The Court of Appeals dismissed his appeal by order dated March 16, 2000.

2002-CP-36-040

The Applicant subsequently filed a second application for PCR on January 30, 2002. The Respondent made its Return on March 25, 2003. By written Order filed November 19, 2003, the Honorable Wyatt T. Saunders, Jr. denied and dismissed with prejudice the Applicant's application.

A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted. On December 1, 2005, the South Carolina Supreme Court denied the

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Petition.

2011-CP-36-0022

The Applicant subsequently filed a third application for PCR on January 14, 2011. The Respondent made its Return and Motion to Dismiss on December 6, 2011. By written Order filed December 8, 2011, the Honorable Eugene C. Griffith, Jr. issued a Conditional Order of Dismissal for failure to file within the statute of limitations, for being successive, and for failure to properly allege newly discovered evidence. After Applicant failed to respond to the Conditional Order of Dismissal, the Honorable Eugene C. Griffith, Jr. issued a Final Order denying and dismissing Applicant's case.

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

1. "Prosecutorial Misconduct"
2. "Presentation/Failure to Correct False Testimony"
3. "Failure to Disclose Favorable Evidence"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

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Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on the Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. 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 judgement 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 was convicted of the offense(s) he challenges in this Application on January 19, 1995.

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The Applicant was therefore required to file his application before January 20, 1996. This Application was filed on March 6, 2014, which was well after the statutory filing period had expired.

A motion for summary judgement 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 judgement as a matter of law."

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 Newberry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

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DJA

AND IT IS SO ORDERED this 15 day of May, 2014.



FRANK R. ADDY, JR. Donna B. Hacker
Chief Administrative Judge
Eighth Judicial Circuit

Clemson, South Carolina

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