

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Bennie James Riser, #218912, )

Applicant. )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-1034

**RECEIVED**

JAN 20 2015

**FINAL ORDER**

**S.C. Supreme Court**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 2, 2011, but received by the Respondent on July 11, 2012. Respondent made its Return and Motion to Dismiss on or about May 30, 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 dated August 20, 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 October 17, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned, "Actual Evidence / Return and Motion to Grant PCR" filed on September 20, 2013, Applicant requests that the grant him an evidentiary hearing on his claims. Applicant alleges that his application is not successive or barred by the statute of limitations because he is raising a claim of actual innocence by newly discovered evidence. However, Applicant offers

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no evidence to support his claim other than assertions that he pled guilty based upon ineffective assistance of counsel, inadequate investigation and evidence.

In a document captioned, "Motion to Grant Post-Conviction Relief Hearing," filed November 12, 2013, the Applicant continues to attack the work of his plea counsel and argues that counsel lied to him regarding the DNA evidence linking Applicant to the crime. Applicant also raises additional issues of ineffective assistance of counsel and ineffective assistance of prior PCR counsel. Applicant requests that all evidence related to DNA in his case be retested.

This Court has reviewed the original and subsequent pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Not only is this application successive and barred by the statute of limitations, but it is also barred by the doctrine of res judicata.

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.

AND IT IS SO ORDERED this 20 day of November, 2014.

  
\_\_\_\_\_  
J. Derham Cole  
Seventh Judicial Circuit

\_\_\_\_\_, South Carolina.

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M. HOPE BLANCHETT

**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 L.T. McCurry (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 )  
COUNTY OF McCormick ) **AFFIDAVIT OF PERSONAL SERVICE**

On this 17<sup>th</sup> day of October, 2013, I served the signed Conditional Order of Dismissal on Inmate Bennie James Riser, SCDC No. 218912, by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick, South Carolina. Deponent is not a party to this action.

/s/ L.T. McCurry  
SCDC Server

**SWORN TO AND SUBSCRIBED BEFORE ME**

This 17 day of October, 2013

J. Frankler (L.S.)  
Notary Public for South Carolina  
My commission expires 12/16/2019

**ADMISSION OF SERVICE**

Service of a signed copy of the Conditional Order of Dismissal at the S.C. Department of Corrections, McCormick Correctional Institution, McCormick County, South Carolina, this 17<sup>th</sup> day of October, 2013.

\* Bennie Riser  
Inmate Signature  
SCDC No. 218912

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MADRID CLERK  
SPECIAL SERVICES DIVISION

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304 3483



Phone (864) 596-2591  
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M. Hope Blackley  
Clerk of Court

December 8, 2014

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Bernie James Riser  
Applicant # 218912

7<sup>TH</sup> JUDICIAL CIRCUIT

CASE 2011-CP-42-1034

VS  
State  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Final Order  
In this action dated 11-20-14 on 12-8-14

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Bernie J Riser  
Supreme White  
Ashley Hancock

Dec 8 2014  
(Date)

[Signature]  
(Signature)