

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Greenville County
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP-23-0125

Roger Dale Navy, #251709,

Appellant,

vs.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Roger Dale Navy Appeals the Order of the Honorable Letitia H. Verdin dated December 8, 2014. Appellant received written Notice of the Order on January 6, 2015.

Date: February 1, 2015

RECEIVED

FEB 09 2015

S.C. SUPREME COURT

Karen C. Ratigan, Esq.
Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

/s/ Roger Dale Navy

Roger Dale Navy, SCDC#251709
Evans Correctional Institution
610 Hwy 9 West / F5D 143
Bennettsville, SC 29512-2130

Roger Dale Navy, SCDC#251709
Evans Correctional Institution
610 HWY 9 WEST / F5D 143
Bennettsville, SC 29512-213010

February 5, 2015

Daniel E. Shearouse
SOUTH CAROLINA SUPREME COURT
CLERK OF COURT
P.O. BOX 11330
COLUMBIA, SC 29211

Dear Hon. Clerk,

Please find enclosed a Notice Of Appeal, Copy of Final Order of Dismissal, Written Explanation, Supplemental Documents in Support of Explanation, Certificate of Service and this Cover Letter. Please clock-date-stamp-file and return a copy to me. Thank you in advance for your anticipated cooperation & assistance in this matter.

Sincerely,

RECEIVED

FEB 09 2015

S.C. SUPREME COURT

/s/ Roger Dale Navy

Roger Dale Navy, SCDC#251709

cc: file
Greenville County Court of Common Pleas
Karen C. Ratigan, SC Attorney General's Office

CERTIFICATE OF SERVICE

I, Roger Dale Navy, SCDC#251709, Appellant, declare under the penalty of perjury that the foregoing is true and correct. See 28 U.S.C.A. § 1746.

I, Roger Dale Navy, hereby certify that a NOTICE OF APPEAL, COPY OF THE FINAL ORDER OF DISMISS, WRITTEN EXPLANATION, SUPPLEMENTAL DOCUMENTS IN SUPPORT OF EXPLANATION, COVER LETTER and this CERTIFICATE OF SERVICE has been mailed to THE SUPREME COURT OF SOUTH CAROLINA, DANIEL E. SHEAROUSE, CLERK OF COURT, P.O. BOX 11330, COLUMBIA, SC 29211, PAUL B. WICKENSIMER, GREENVILLE COUNTY, CLERK OF COURT, 305 EAST NORTH STREET, GREENVILLE, SC 29601, and THE SC ATTORNEY GENERAL'S OFFICE, KAREN C. RATIGAN, SADAG, POST-CONVICTION RELIEF, POST OFFICE BOX 11549, COLUMBIA, SC 29211-1549 by placing an original and a copy in the United States Mail (By and through the Evans Correctional Institution's - LEGAL MAIL SYSTEM).

/s/ Roger Dale Navy
Roger Dale Navy, SCDC#251709
Evans Correctional Institution
610 Hwy 9 WEST / F5D 143
Bennettsville, SC 29512-2130

SWORN to and SUBSCRIBED before me
This 5th day of February, 2015
Notary: J. Outlaw
Expires: 2/24



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Roger Dale Navy,)
S.C.D.C. No. 251709,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
2014-CP-23-0125

2014 DEC 31 PM 3 15

FILED IN THE COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSHER

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 9, 2014. The Respondent made its return on September 12, 2014, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

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 September 26, 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 October 30, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Opposition to Summary Dismissal" and dated October 20, 2014, the Applicant argues his PCR counsel (from his second PCR application) was ineffective. The Applicant argues the United States Supreme Court case Martinez v. Ryan, 132 S. Ct. 1309

(2012) is applicable. The Applicant argues plea counsel's affidavit attached to the State's Return and Motion to Dismiss (regarding the parole eligibility issue) is "false information and fraud upon the Court." The Applicant argues a violation of Rule 3(c), SCRCrimP.

In a document captioned "Motion to Amend Pursuant to SCRCiv.P. Rule 15 Amended and Supplemental Pleadings" and filed October 28, 2014, the Applicant attached several documents which he claimed "support [his] contention that Grand Jury documents did not exist."

In a document captioned "Motion for Relief from Judgment" and filed October 28, 2014, the Applicant cites Rule 60, SCRCv.P. as his authority. The Applicant states he "seeks relief from the judgment of the Greenville County Court of General Sessions." The Applicant argues he has newly discovered evidence "that there were not grand jury documents" for his charges.

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 pled guilty and was sentenced on August 5, 1998. As this action was filed on January 9, 2014, 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 fifth application for post-conviction relief.¹ 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 May 1, 2001. See Odom v. State, 337 S.C. 256, 261,

¹ The Applicant has also filed one petition for writ of habeas corpus in state court and two petitions for writs of habeas corpus in federal court.

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.’”).

This Court finds the Applicant’s allegation that his PCR attorney was ineffective is not a proper claim for post-conviction relief. While the Applicant cites Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012) to support his claim, the South Carolina Supreme Court has found that “the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

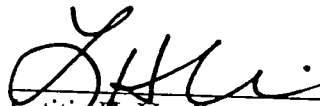
This Court finds the Applicant’s allegation of newly-discovered evidence is without merit. This Court finds the Applicant’s alleged evidence has failed to prove any of the five (5) required elements of newly-discovered evidence. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). As noted in the Conditional Order of Dismissal, this Court examined plea counsel’s affidavit – stating he did not tell the Applicant he would be parole eligible – and found it to be credible. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“The credibility of newly-discovered evidence is for the trial court to determine.”).

This Court finds the Applicant has failed to demonstrate he is entitled to relief as a result of a Rule 3(c), SCR CRimP violation. State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.”). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from a delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one’s speedy trial rights were violated).

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 8 day of Dec., 2014.



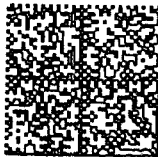
Letitia H. Verdin
Chief Administrative Judge
Thirteenth Judicial Circuit

Oxenville South Carolina.

Male Navy, SUDC#251709
Correctional Institution
WY 9 WEST / F5D 143
Columbia, SC 29512-213010



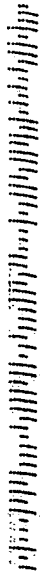
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THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE
CLERK OF COURT
P.O. BOX 11330
COLUMBIA, SC 29211

-LEGAL MAIL-

LEGAL MAIL



THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS