

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

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July 29, 2015

RECEIVED

AUG 03 2015

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

S.C. SUPREME COURT

***Re: Notice of Intent to Appeal from Darnell East Hudson vs. State of South Carolina C.A. No.: 2013-CP-23-993***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Perry H. Gravely's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**RECEIVED**

AUG 03 2015

Perry H. Gravely, Circuit Court Judge

**S.C. SUPREME COURT**

Case No. 2013-CP-23-00993

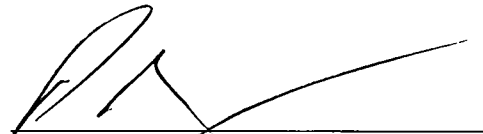
Darnell Hudson,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On July 12, 2015, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on July 24, 2015. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



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Greenville, SC 29601  
Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Darnell Hudson

Greenville, South Carolina  
July 29, 2015

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

SC Commission of Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
Columbia, SC 29211-1433

Darnell Hudson SCDC# 227328  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

AUG 03 2015

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No.2013-CP-23-00993

Darnell Hudson,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this July 29, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**Darnell Hudson SCDC# 227328**  
**Lieber Correctional Institution**  
**Post Office Box 205**  
**Ridgeville, South Carolina 29472**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

July 29, 2015

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP230993

Darnell East Hudson,  
S.C.D.C. No. 227328

State of South Carolina

FILED  
GREENVILLE CO. CLERK  
PAUL T. HENSLEY  
2015 JUN 11 PM 1

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigants

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 43(k), SCRPC (Settled);
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Binding arbitration; subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - 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 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.

*Darnell East Hudson*  
Circuit Court Judge

2755  
Judge Code

7/8/2015  
Date

**For Clerk of Court Office Use Only**

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

R. Mills Anail, Jr  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Ratigan  
ATTORNEY(S) FOR THE DEFENDANT(S)

**Court Reporter**

**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.

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STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Darnell East Hudson, )  
S.C.D.C. No. 227328, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2013-CP-23-0993

**ORDER OF DISMISSAL  
WITH PREJUDICE**

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2015 JUL 20 PM 4 41

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 19, 2013. The Respondent made its return and motion to dismiss on August 5, 2013.<sup>1</sup> A hearing was convened at the Greenville County Courthouse on June 17, 2015 at which time the Applicant was present in court and represented by R. Mills Ariail, Jr., Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss based on the Applicant's failure to file his PCR application before the expiration of the statute of limitations.

**I. PROCEDURAL BACKGROUND**

The Applicant is confined in the South Carolina Department of Corrections. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented

<sup>1</sup> A hearing was held on December 19, 2013 and the Applicant appeared pro se. On January 23, 2014, the Honorable G. Edward Welmaker filed an order granting the Respondent's motion to dismiss. The Applicant filed an appeal. The Respondent consented to remand the matter back to circuit court for a new hearing where the Applicant would be represented by counsel. The South Carolina Supreme Court agreed and issued an order of dismissal on February 19, 2015.

by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed 6 years for armed robbery and not to exceed 6 years suspended to 5 years probation for ABHAN. The Applicant did not appeal.

## II. ALLEGATIONS

In his PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
  - a. Brady Violation.
3. "Involuntary guilty plea."

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the pleadings, and Applicant's Exhibits 2, 4, 5, and makes the following findings of fact and conclusions of law:

### A. Statute of Limitations

This Court finds this PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina 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 judgment 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 Applicant pled guilty to the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the one-year statutory filing period had expired. The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. The Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's plea hearing – except for the issue of after-discovered evidence – are summarily dismissed.

#### **B. After-Discovered Evidence**

The Applicant argued there was after-discovered evidence (that was also Brady<sup>2</sup> material) in his case. The Applicant argued that he discovered on January 23, 2013 that the victim in this case had a prior suicide attempt in November 1993. The Applicant argued that, as the crimes in this case occurred in March 1995, this was relevant because the victim had brain damage but still identified him in a photographic lineup. The Applicant argued that, if the State had known about the victim's prior suicide attempt, it should have been disclosed. The Applicant argued the State did not have any information about the victim's prior medical history in the discovery material and that they would have known about it because the victim had been transported to Greenville Memorial Hospital. The Applicant argued he should be given the benefit of the doubt.

This Court finds the Applicant has failed to meet his burden of proving there is after-discovered evidence or a Brady violation. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a

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<sup>2</sup> Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

preponderance of the evidence.”). The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged 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) (citation omitted) (emphasis added). “A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added).

This Court finds the Applicant has not shown that the alleged evidence meets any of the requirements for proving either after-discovered evidence or a Brady violation. This Court finds the Applicant has not demonstrated an inability to have discovered this information (through due diligence) prior to the plea hearing in 1995. This Court finds the Applicant has not demonstrated this information is material to guilt or innocence. This Court finds the Applicant has not demonstrated this information is more than simply impeaching evidence. This Court finds the Applicant has not demonstrated that he would have gone to trial if he had been in possession of this information. See *id.* at 525, 514 S.E.2d at 325 (“A Brady violation is material when there is a reasonable probability that, but for the government’s failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial.”).

This Court notes the Applicant has failed to show the State was in possession of the

victim's medical records from his November 1993 injury. This Court notes the Applicant has failed to show the State suppressed this information. This Court finds the victim's prior medical records are not discovery within the meaning of Rule 5, SCRCrimP and Brady. This Court further notes the affidavits submitted by the Applicant (Exhibits 2, 4, 5) do not say the Applicant did not injure the victim. They merely state the victim – whose injuries are unrefuted – could not recall anything about the incident.

This Court concludes the Applicant has not presented credible after-discovered evidence or demonstrated that this information was Brady material. 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.”).

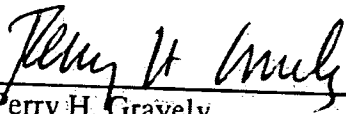
#### IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the Applicant failed to file his PCR application within the time mandated by the Uniform Post-Conviction Procedure Act. This Court further finds the Applicant failed to meet his burden of proving after-discovered evidence. 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 the 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.

**IT IS THEREFORE ORDERED THAT:**

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

**AND IT IS SO ORDERED** this 12<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
Perry H. Gravely  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

**R. MILLS ARIALL, JR.**  
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11  
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