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COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Charles Jordan,)

Case No. 2013-CP-16-678

Applicant,)

FINAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed August 9, 2013. Respondent made a timely Return and Motion to Dismiss on or about March 12, 2015, requesting the Application be summarily dismissed as successive, untimely, and failing to state a claim upon which relief could be granted. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Court issued a Conditional Order of Dismissal, filed on March 25, 2015, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated April 28, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed an objection to the conditional order on March 31, 2015. In that filing, Applicant alleges he learned of the case of State v. Smalls, 354 S.C. 498, 581 S.E.2d 850 (Ct. App. 2003), rev'd 364 S.C. 343, 613 S.E.2d 754 (2005), overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), in the Spring of 2010, and that his trial counsel and post-conviction

FILED
2015 APR 15 PM 1:41
SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

Page 1 of 3
TRUE CERTIFIED COPY,
Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

relief counsel were ineffective in failing to argue that case at trial and at his initial post-conviction relief hearing. He also reasserts the grounds for relief contained in his application.


Applicant filed a Motion for Summary Judgment on April 7, 2015. In that motion, Applicant argues Smalls, supra, entitles him to relief in this case.

The Court has reviewed the original pleadings, Applicant's submissions, and all relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not successive, untimely, and fails to state a claim upon which relief could be granted. Specifically, the Court notes Applicant's reliance on Smalls, 354 S.C. 498, 581 S.E.2d 850, is misplaced where the Supreme Court reversed that opinion, 364 S.C. 343, 613 S.E.2d 754, and later overruled it entirely, Gentry, 363 S.C. 93, 610 S.E.2d 494. Furthermore, Applicant is not entitled to an untimely and successive filing simply because he has recently discovered case law that was published and available at the time of his prior collateral actions. See, e.g., Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000) ("[I]t is well established that 'ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.'" (quoting Fisher v. Johnson, 174 F.3d 710 (5th Cir. 1999))). Finally, the Court notes Applicant raised the issue of subject matter jurisdiction in his second application, and cannot attempt to relitigate that issues in a third application. Accordingly, the Court finds Applicant has not demonstrated sufficient reason why the conditional order 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 Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCR, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 1st DAY OF July, 2015.



THE HONORABLE PAUL M. BURCH
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF PERSONAL SERVICE

RECEIVED

In the matter of Charles Jordan: 2013-CP-16-0678

AUG 10 2015

SC Court of Appeals

- ___ Judgment and Order
- ___ Application and Certification for Emergency Admission
- ___ Notice of Emergency Admission
- ___ Order for Hospitalization and Hearing
- ___ Discharge of Patient's Medical Record
- ___ Appointment of Designated Examiners
- ___ Notice of Hearing
- ___ Appointment of Counsel
- ___ Appointment of Guardian ad Litem
- ___ Notice of Petition for Judicial Admission
- ___ Notice of Right to Counsel
- ___ Order of Substitution
- ___ Summons and Complaint
- ___ Notice of Procure a Guardian ad Litem
- ___ Appointment of Special Probate Judge
- ___ Schedule of Examination Date
- XXX Other: Conditional Order of Dismissal

Mable Pratt, who being duly sworn, deposes and says that they personally served the legal papers upon the above-named individual on the 28 day of April, 2015, by delivering to and leaving documents with said individual.

Mable Pratt, RN 4/28/15
Signature of Person Serving Date

SWORN TO AND SUBSCRIBED BEFORE ME THIS

This 28 day of April 2015.

Melvin J. [Signature]
Notary Public for South Carolina

My Commission Expires: July 7, 2018

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The Honorable v. Claire Allen Deputy
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

AUG 10 2015

SC Court of Appeals

Re: Jordan, Charles v. The state
Appeal from Darlington County
Appellate Case no. 2015-001479

Dear Ms. v. Claire Allen:

Enclosed please find the original and one copy of the Appellant's Initial Brief and Designation of matter to be included in the record on appeal. By copy of this letter, I am serving the Respondent's with a copy of both submissions.

cc;

Attorney General, Alan Wilson
Clerk of Court, Darlington County

Sincerely,
Charles Jordan
Charles Jordan



RECEIVED
AUG 10 2015
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

July 16, 2015

Cathy Garner
DMH-SVP
7901 Farrow Road; Building 6
Columbia SC 29203

Re: Charles Jordan v. State of South Carolina
2013-CP-16-0678

Dear Ms. Garner:

Enclosed please find the **Final Order** dismissing the above-captioned inmate's post-conviction relief application. Please serve the inmate, **Charles Jordan**, with the order and provide me with an affidavit of service.

If you have any questions, please feel free to call: (803) 734-0021.

Sincerely,

Joshua L. Thomas
Assistant Attorney General

JLT/jacc
Enclosure