

SC Supreme Court

Daniel E. Shearouse

Post office Box 11330

Columbia, South Carolina 29211

November 4, 2015

RECEIVED

NOV 10 2015

S.C. SUPREME COURT

Re: Notice of intent to appeal

Lower Court Case no. 2013 CP1600678

Dear Mr. Shearouse:

Enclosed please find a copy of the Appellants documents one copy of proof of service and a copy of the re-filing of notice of intent to appeal. and other documents as proof and dated. this concerning the notice that the Appellant received on November 3, 2015, I appreciate you advised me about the SC Court of Appeals thanks.

Note: I received final order July 25, 2015
I served the Respondents on
September 27, 2015

Sincerely,
Charles Jordan
Charles Jordan
7901 Farrow Rd
Bldg. 3 Fl. 3
Columbia, SC 29203

The Supreme Court of South Carolina

Charles Jordan, Petitioner,

v.

The State of South Carolina, Respondent.


Appellate Case No. 2015-001479

Lower Court Case No. 2013CP1600678

ORDER

On July 2, 2015, petitioner served the notice of appeal in this post-conviction relief case. At that time, the only order that had been filed in the circuit court was a conditional order of dismissal dated March 14, 2015.¹

Since a conditional order of dismissal is not an appealable order,² the notice of appeal is hereby dismissed without prejudice to whatever right petitioner may now have to timely serve and file a notice of appeal from the final order. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.


C.J.
FOR THE COURT

Columbia, South Carolina
September 21, 2015

cc: Joshua L. Thomas, Esquire
Mr. Charles Jordan

¹ The final order was not filed in the circuit court until July 14, 2015.

² *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006).

Exhibit

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

September 27, 2015

Re: Jordan, Charles v. The state
Appeal from Darlington County
Lower Court Case No. 2013 CP1600678

Dear Ms. Allen:

Enclosed for refiling as ordered by South Carolina Supreme Court of September 21, 2015, notice of intent to appeal (PCR) also enclosed are the following.

- (1.) Proof of service of notice of appeal on the respondents.
- (2.) A copy of the final judgment to be challenged on appeal.
- (3.) Motion for leave indigent
- (4.) A copy of the September 21, 2015, SC Supreme Court to refiling

Note: I do not believe I can use the old appeal number

CC: Attorney General, Alan Wilson
Clerk of Court, Darlington County

Sincerely,
Charles Jordan-
Charles Jordan
7901 Farrow Rd. Bldg. 3 Fl. 3
Columbia, SC 29203

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM DARLINGTON COUNTY
COURT OF COMMON PLEAS

NOV 10 2015

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

CASE NO. 2013 CP1600678

STATE OF South Carolina Respondent,
v.
Charles Jordan Appellant,

NOTICE OF APPEAL

Charles Jordan appeals the decision of the Honorable Paul M. Burch, dated July 14, 2015, Appellant received a copy of this decision not from Clerk of Court, but from SC DMH on approximately July 25, 2015, due to untimely original filing the SC Supreme Court ordered a refiling of notice of appeal on September 21, 2015, received on September 23, 2015.

September 27, 2015

Other Counsel of record
Alan Wilson
SC Attorney General
P.O. Box 11549
Columbia, SC 29211

Charles Jordan

Charles Jordan
7901 Farrow Rd
Bldg. 3 Fl. 3
Columbia, SC 29203

The Honorable Scott B. Suggs
Clerk of Court
Post office Box 1177
Darlington, South Carolina 29540

September 27, 2015

RECEIVED

NOV 10 2015

S.C. SUPREME COURT

RE: Jordan, Charles V. The state
Appeal from Darlington County
Lower Court case no. 2013 CP1600679

Dear Mr. Suggs:

Enclosed for filing is (refiled) notice of appeal
in the above case.

Sincerely,
Charles Jordan
Charles Jordan
7901 Farrow Rd.
Bldg. 3 Fl. 3
Columbia, SC 29203

cc;

Alan Wilson
SC Attorney General
P.O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

NOV 10 2015

S.C. SUPREME COURT

Paul M. Burch,

Circuit Court Judge

Case no. 2013CP1600678

State of South Carolina

Respondent,

v.

Charles Jordan

Appellant,

PROOF OF SERVICE

I certify that I have served the refiling of the notice of appeal on Clerk of Court, Darlington County on September 27, 2015 and Attorney of record Alan Wilson SC Attorney General addressed P.O. Box 11549, Columbia, SC 29211

September 27, 2015

Charles Jordan

Charles Jordan

7901 Farrow Rd.

Bldg. 3 Fl. 3

Columbia, SC 29203

JS

STATE OF SOUTH CAROLINA)
 COUNTY OF DARLINGTON)
)
)
 Charles Jordan,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

2013-CP-16-0678

**CONDITIONAL ORDER OF
 DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Charles Jordan (Applicant) on August 9, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the Sexually Violent Predator Treatment Program in the Department Health. Applicant was indicted during the August 2003 term of the Darlington County Grand Jury for lewd act upon a child (2003-GS-16-1491). On July 25, 2003, Applicant pled guilty as indicted. J. Richard Jones, Esquire, represented Applicant. The Honorable Paul M. Burch sentenced Applicant to a term of imprisonment of twelve years suspended upon the service of eight years and five years' probation. Applicant did not appeal his guilty plea or sentence.

First PCR Application: 2004-CP-16-0257

Applicant filed his first PCR application on March 16, 2004, alleging the following grounds for relief:

- 1. Ineffective assistance of counsel;

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 SCOTT B. SUGGS
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

2. Involuntary guilty plea; and
3. Illegal sentence.

An evidentiary hearing was held on November 15, 2004 at the Darlington County Courthouse. H. Thad White, Esquire, represented Applicant. By order filed December 8, 2004, the Honorable B. Hicks Harwell, Jr. denied and dismissed the application.

Applicant appealed, and the South Carolina Supreme Court denied his *Johnson*¹ petition for a writ of certiorari on March 23, 2007.

First Federal Habeas Corpus Petition: 8:09-51-CMC-BHH

Applicant filed a pro se federal petition for a writ of habeas corpus on January 7, 2009. Respondent filed its return and motion for summary judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued a report on December 10, 2009 recommending Respondent's motion for summary judgment be granted. The Honorable Cameron McGowan Currie, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice on January 29, 2010.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit, which dismissed his appeal on May 28, 2010.

Second PCR Application: 2010-CP-16-0859

Applicant filed his second PCR application on November 14, 2011, alleging the following grounds for relief:

1. Subject matter jurisdiction.
 - i. Pled guilty to a charge that was not a lesser-included offense.
 - ii. Pled guilty pursuant to "an unconstitutionally moot statute."
2. Ineffective assistance of counsel.

¹ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

Respondent made its return and motion to dismiss on February 7, 2012, requesting the circuit court summarily deny and dismiss the application. The Honorable Paul M. Burch signed a conditional order of dismissal on February 10, 2012. On March 29, 2012, Judge Burch issued a final order of dismissal, denying and dismissing the application with prejudice.

Applicant appealed in the form of a petition for a writ of habeas corpus, and the South Carolina Supreme Court denied his petition on May 8, 2013.

II.

Applicant filed his current application on August 9, 2013, alleging the following grounds for relief:

1. Constitutional violation: 4th, 5th, 6th, 8th, 14th Amendment;
2. Court lacked subject matter jurisdiction;
3. Newly discovered evidence;
4. Defendant waived presentment to grand jury; and
5. Unlawfully being held under civil commitment.

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, appellate records, and Applicant's previous and current PCR records.

III.

This Court finds Applicant's third and current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended

application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the 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.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing that he could not have previously raised the allegations. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous applications.

IV.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 South Carolina Supreme Court held the one-year 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). Applicant pled guilty to the offense he challenges on July 25, 2003. He did not appeal his guilty plea or sentence. Therefore, Applicant was required to file his PCR application on or before July 25, 2004. Applicant filed this application on August 9, 2013, **more than nine years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period ends. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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 judgment as a matter of law." Therefore, this Court must summarily dismiss this application for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

This Court also finds Applicant's vague claim of newly discovered evidence fails to make a prima facie showing that he is in actual possession of such evidence or that evidence would likely result in his guilty plea being vacated.

Generally, an applicant may raise a newly discovered evidence claim within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. S.C. Code Ann. § 17-27-45(c) (2014). When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been

discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea be vacated. *Jamison v. State*, 765 S.E.2d 123, 129, ___ S.C. ___, ___ (2014).

“[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant’s right to contest the validity of such a plea is usually, but not definitely, foreclosed. *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, “a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State’s case or the likely penalties attached to alternative courses of action.” *Brady v. U.S.*, 397 U.S. 742, 757 (1970).

In *Jamison*, the South Carolina Supreme Court noted it would be a “rare case” where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. 165 S.E.2d at 130. Applicant’s newly discovered evidence claim does not sufficiently or clearly present a “rare case” requiring a vacation in the interest of justice. Applicant failed to set forth with any specificity what this newly discovered evidence is, and how its weight and quality require his guilty plea and sentence to be vacated in the interests of justice. Before the circuit court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). This Court finds

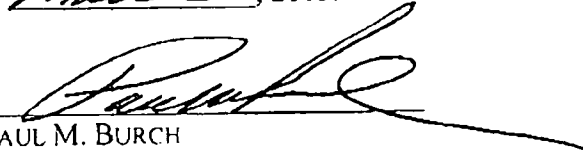
Applicant failed to make a prima facie showing that he is entitled to relief based on the information set forth and, therefore, is not entitled to an evidentiary hearing in the matter.

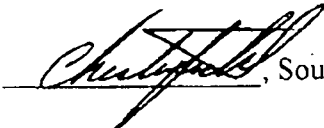
VI.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Darlington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 14th day of March, 2015.


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


Cheryl, South Carolina



ALAN WILSON
ATTORNEY GENERAL

July 16, 2015

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

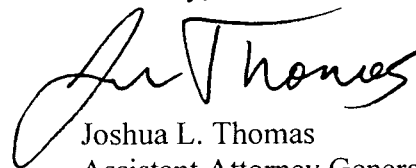
Re: Charles Jordan v. State of South Carolina
2013-CP-16-0678

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

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Charles Jordan,)
)
Applicant,)

Case No. 2013-CP-16-678

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

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

New refile Appeal
on all parties

Resident Outgoing Mail Form
(Form Completed by the Resident)

1. Article Addressed to (Please Print):
SC Court of Appeals
V. Claire Allen Deputy Clerk
P.O. Box 11629
Columbia, SC 29211

2. Date Resident placed in the box:
9-27-15

3. Description of article sent: (e.g.: letter or package, etc.)

1 letter

4. Article Sent by (Resident) Please sign legibly:

Charles Jordan

5. Staff Member Name / Pick-up from box Date:

RJ 9/29/15

6. Staff Comments:

HAVE STAMP

Resident Outgoing Mail Form
(Form Completed by the Resident)

1. Article Addressed to (Please Print):
SC Attorney General office
Alan Wilson
Post office Box 11549
Columbia, South Carolina

2. Date Resident placed in the box:
9-27-15

3. Description of article sent: (e.g.: letter or package, etc.)
1 letter

4. Article Sent by (Resident) Please sign legibly:

Charles Jordan

5. Staff Member Name / Pick-up From box Date:

DB 9/28/15

6. Staff Comments:

HAVE SCAMP

Resident Outgoing Mail Form
(Form Completed by the Resident)

1. Article Addressed to (Please Print):

Scott B. Suggs
Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

2. Date Resident placed in the box:

9-27-15

3. Description of article sent: (e.g.: letter or package, etc.)

1 letter

4. Article Sent by (Resident) Please sign legibly:

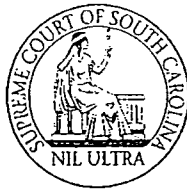
Charles Jordan

5. Staff Member Name / Pick-up From box Date:

RJ 9/28/15

6. Staff Comments:

HAVE SPAM



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 8, 2015

The Honorable Scott B. Suggs
1 Public Sq Rm B4
Darlington SC 29532-3213

REMITTITUR

Re: Charles Jordan v. The State
Lower Court Case No. 2013CP1600678
Appellate Case No. 2015-001479

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

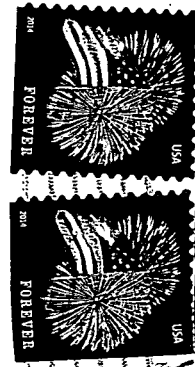
Very truly yours,

CLERK

cc: Jessica Kinard, Esquire
Charles Jordan

Charles Jordan
7901 Farrow Rd
Bldg. 3 Fl. 3
Columbia, SC 29203

COLUMBIA SC 290
09 NOV 2015 PM 11 L



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

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