



ALAN WILSON  
ATTORNEY GENERAL

April 2, 2015

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2015 APR 20 PM 12:02  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC


The Honorable Daniel D. Hall  
1675-1E York Hwy  
York, SC 29745

Re: John P. Cousar, III v. State of South Carolina  
2014-CP-46-3485

Dear Judge Hall:

Enclosed please find a proposed Final Order of Dismissal in the above case. If this order meets with your approval, please sign it and return to me in the self-addressed envelope provided. I will file it with the clerk.

Sincerely,

  
J. Rutledge Johnson  
Assistant Attorney General

JRJ:cey  
Enclosures

*Received  
4-6-15*

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

John P Cousar III, #316748, )  
Applicant, )

2014-CP-46-3485

v. )

FINAL ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

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CLERK OF COURT  
YORK COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 21, 2014. The Respondent (the State) made its Return and Motion to Dismiss on December 30, 2015, 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, the Honorable R. Keith Kelly issued a Conditional Order of Dismissal dated January 7, 2015, 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. The Applicant replied timely to the Conditional Order of Dismissal on January 15, 2015.

In a document titled "Post Conviction Relief Motion" and construed as a Response to the Conditional Order of Dismissal, the Applicant argues he is entitled to an evidentiary hearing based upon "The Discovery Rule" of S.C. Code Ann. § 17-27-45(c) because he alleges he diligently found information that the Circuit Court lacked both personal and subject matter jurisdiction over

Applicant due to a defective indictment by the grand jury issuing a 'true-bill' indictment when there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006."

This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

First, Applicant claims this information that there was no term of General Sessions on March 16, 2006 is "newly discovered evidence" under S.C. Code Ann. § 17-27-45(c). S.C. § 17-27-45(c) states: "If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or **after the date when the facts could have been ascertained by the exercise of reasonable diligence.**" (emphasis added). Applicant pled guilty on July 27, 2006. Clearly, this information would have been available at that time. Applicant could have, by the exercise of reasonable diligence, ascertained that there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006." Thus, he had until March 17, 2007 to properly assert this claim. He cannot now claim this as "newly discovered evidence." This Court denies and dismissed this claim.

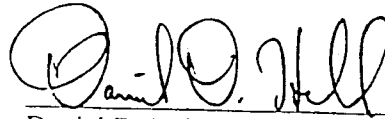
This Court finds that the Applicant's allegation that there was a defective indictment issued in this case because there was "no court of general sessions for York County or Grand Jury in York County March 16, 2006." This Court takes judicial notice of the fact that our Supreme Court from time to time issues administrative type orders that explain that the grand jury may be convened when the public interest may necessitate.<sup>1</sup> Thus, Applicant contention fails.

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<sup>1</sup> For example, S.C. Sup. Ct. Order dated July 17, 2009.  
<http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-07-17-01>

SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 13<sup>th</sup> day of April, 2015.



Daniel D. Hall  
Presiding Judge<sup>2</sup>  
Sixteenth Judicial Circuit

York, South Carolina.

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<sup>2</sup> The Honorable John C. Hayes, III presided over Applicant's guilty plea.