

November 20, 2015

Thomas Lowery, #83240
KER.CI-HD235
4848 Goldmine Hwy.
Kershaw, SC 29067

S.C. Supreme Court
Daniel E. Shearouse, Clerk
P.O. Box 11330
Columbia, SC 29211

RE: Thomas Lowery v. State, Appellate Case No. 2015-002101

Dear Mr. Shearouse:

I'm in receipt of your letter dated November 16, 2015, pertaining the above-entitled matter. You indicated that "no action will be taken on this motion for several reasons."

My apology regarding Rule 60(b), SCRCF, but my interpretation of Rule 82(a), SCRCF, was my belief that my Rule 60(b) Motion is applicable to appellate proceedings. Be that as it may, if this Court will construe my motion as a petition for rehearing, and accept the same after expiration of original time by enlarging time for reasons beyond my control.

First, as you know the historical rain and flooding in the State of South Carolina caused a state of emergency that was ordered by Governor Haley, and as a result, the Kershaw Correctional Institution was on lock-down for several days with no mail services; no access to the law library, and modified lock-down also prevented movement to the law library, and mailservices was still limited. For the foregoing reasons alone, this Court should accept my motion construed as a petition for rehearing after expiration of original time.

Secondly, I'm respectfully requesting based on good cause shown that the Court reinstate the proceeding and recall the remittitur that was sent to the lower court prematurely on 11/6/15, due to the unique or extraordinary circumstances regarding this matter.

Or, the alternative, enclosed is a copy of the final order of dismissal in case number 2015-CP-31-0068, did not indicate a White v. State claim in my first PCR case. The record will show that an Austin claim was raised, which should have raised a White v. State claim. The record will continue to show that court officials and officers of the court pranced around the White v. State claim by inadequately raising the issue. The White v. State claim was never properly raised in the first PCR nor any other PCR afterwards. I have not received my bite of the apple.

Based on the foregoing inadvertence, I desire to be granted permission to file a new PCR application seeking a belated direct appeal from my guilty plea under White v. State, for reasons not adhere to under Rule 603, of SCRE, and I ask that this Court accept my request to seek permission from this Court in lieu of filing and serving a motion under Rule 240, SCACR, but instead by this reply to your letter dated 11/16/15. Unlike Graham (661 S.E.2d 337 (2008), my issue of denial of my right to direct appeal in the first PCR was inadequately raised, and White v. State belated appeal has never been addressed in none of the courts because of ineffective assistance of direct appeal counsel, and ineffective of PCR counsel, and ineffective assistance of PCR Austin appellate counsel.

The Court has found that petitioners are not barred from raising PCR appeal in successive application, whereas, right to direct appeal is matter of right required by law, when petitioner did not knowingly and intelligently waive such issue. there is no such waiver of the right to a direct appeal in record under White v. State. Again, the conditional order of dismissal issued by the circuit court in this case does not indicate that a White v. State claim was raised in my first PCR case.

Thank you for reconsidering this matter, and I ask that this Court take action on my motion for reasons mentioned in this communique.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct and that this communique was placed in the mailing system on 11/20/15.

Executed this November 20, 2015.

Respectfully submitted,

s/ *Thomas Lowery*

Thomas Lowery, #83240
KER.CI-HD235
4848 Goldmine Hwy.
Kershaw, SC 29067

cc: Daniel F. Gourley, II
U.S. District Court, 28 U.S.C. §2241 petition

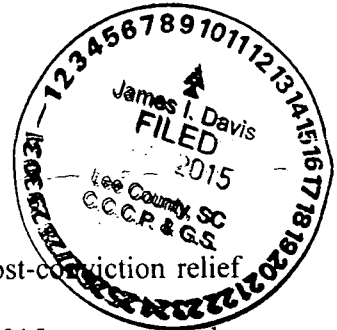
Enclosure

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
))
Thomas Lowery, #83240)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2015-CP-31-0068

FINAL ORDER OF DISMISSAL



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 19, 2015. The Respondent made its return on June 2, 2015, requesting the application be summarily dismissed based upon statute of limitations, successiveness, doctrine of laches, and doctrine of *res judicata*.

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 signed June 3, 2015 and filed June 19, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated July 16, 2015, serving the above mentioned Conditional Order of Dismissal on the Applicant.

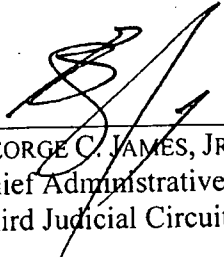
In a document captioned "Petition for Immediate Release from Custody" and filed on July 24, 2015, the Applicant argues that he should be immediately released because the plea judge failed to swear the defendants and witnesses. As a result, Applicant argues the plea court did not have the jurisdiction to accept the plea. Applicant further claims that the prosecutors withheld favorable evidence regarding Applicant's competency.

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.

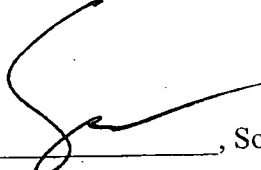
This Court notes the Applicant pled guilty and was sentenced on September 8, 1976.. As this action was filed on March 19, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's fourth application for post-conviction relief. 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 November 10, 1978. See Odom v. State, 337 S.C. 256, 261 523 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.'").

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.

AND IT IS SO ORDERED this 24 day of August, 2015.

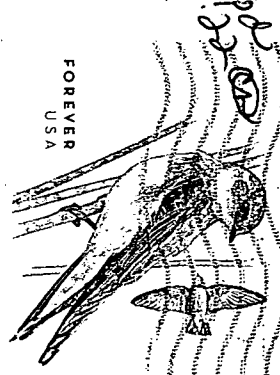


GEORGE C. JAMES, JR.
Chief Administrative Judge
Third Judicial Circuit Court


_____, South Carolina.

THOMAS, LOWERY 083240
KERSHAW C.I., HD235
4848 Goldmine Hwy
KERSHAW, S.C. 29067

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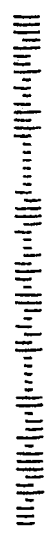


FOREVER
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S.C. Supreme Court
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