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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Damien O. Johnson, #305511,)
Applicant,)

Case No. 2014-CP-26-5195

FINAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

HORRY COUNTY
2015 NOV -4 PM 2:30
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed August 4, 2014. Respondent made a timely Return and Motion to Dismiss on or about July 13, 2015, requesting the Application be summarily dismissed as untimely. 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 July 27, 2015, provisionally denying and dismissing this action, while giving Applicant thirty 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 August 13, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed a document titled "Notice of Right to File Objections to Conditional Order to Dismiss and Return and Motion to Dismiss" on August 12, 2015. In that filing, Applicant argues the grand jury did not meet on the date indicated on his indictment. He also argues his guilty plea was involuntary because counsel did not prepare him for the plea; that he was intoxicated during his plea; and that his counsel was ineffective. He also argues the plea court lacked jurisdiction because he did not have a preliminary hearing. Applicant alleges the

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Court's conditional order contains errors and fails to address the merits of his allegations. Applicant also requests an appeal from his guilty plea.

Applicant filed a document titled "Notice of Motion and Motion for Void Judgment Rule 60(b)(4)" on August 24, 2015. In that filing, Applicant argues his conviction is void because the plea court lacked subject matter jurisdiction.

The Court has reviewed the original pleadings, Applicant's submissions,¹ and all relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not untimely. Applicant's responses to the conditional order fail to set forth any explanation for why he did not file his application prior to October 16, 2013. Instead, he makes arguments about the merits of his underlying allegations. Applicant's arguments regarding subject matter jurisdiction and the grand jury are without merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."); Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (presumption of regularity attaches to grand jury proceedings). Applicant's motion to set aside his conviction under Rule 60(b), SCRPC, is inappropriate because the rules of civil procedure do not apply to his criminal conviction. Applicant's request for an appeal is barred in light of the fact he already had an appeal from his guilty plea. Finally, the Court has reviewed the conditional order and finds it contains no errors of fact or law that


¹ Applicant also filed a document titled "notice of Motion and Motion Requesting entry of Default Judgment" on September 28, 2015. This document was filed beyond the thirty days allotted in the conditional order, and has not been considered by the Court in disposing of this matter. Nevertheless, the Court notes the State cannot be held in default under the facts of this case. See Rule 55 (e), SCRPC; Guinyard v. State, 260 S.C. 220, 225, 195 S.E.2d 392, 394 (1973); Kneece v. State, 269 S.C. 177, 178, 236 S.E.2d 746, 747 (1977); Herring v. State, 262 S.C. 597, 598, 206 S.E.2d 885, 886 (1974).

would entitle Applicant to a hearing on this matter. Overall, Applicant's responses wholly fail to demonstrate specific reasons, factual or legal, why the conditional order should not become final.

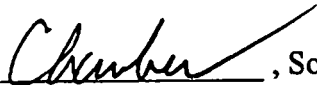
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

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. Applicant's attention is directed to Rules 203 and 243, SCACR, for appropriate procedures for appeal.

IT IS SO ORDERED THIS 28 DAY OF Oct, 2015.



THE HONORABLE WILLIAM H. SEALS JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit


_____, South Carolina

