

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

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COURT OF COMMON PLEAS

MAY 16 2016

S.C. SUPREME COURT

CARMEN T. MULLEN, CHIEF ADMINISTRATIVE JUDGE

CASE NO. 2015-CP-07-1565

STATE OF SOUTH CAROLINA RESPONDENT

V.

JOHN DYKEMAN #245443 APPELLANT

NOTICE OF APPEAL

JOHN DYKEMAN APPEALS THE ORDER OF THE HONORABLE
CARMEN T. MULLEN DATED MARCH 23, 2016, APPELLANT
RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER IN APRIL 12, 2016

5-11-16
DATE

OTHER COUNSEL
OF RECORD

J. RUTLEDGE JOHNSON
ASSISTANT DEPUTY ATTORNEY GENERAL
PO. BOX 11549
COLUMBIA, SC 29211

John Dykeman #245443

JOHN DYKEMAN 245443

LIEBER CORP INST.

PO BOX 205 CA-59

RIDGEVILLE, SC 29472

JOHN DYKEMAN,
#245443,

PETITIONER

v.

STATE OF SOUTH
CAROLINA,

RESPONDENT

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RECEIVED

MAY 16 2016

S.C. SUPREME COURT

I JOHN DYKEMAN THE UNDERSIGNED AFFIRM THAT
A TRUE AND COMPLETE COPY OF NOTICE OF APPEAL,
PETITION FOR WRIT OF CERTIORARI AND ATTACHMENTS
HAS BEEN SERVED THIS 17TH DAY OF MAY 2016
BY DEPOSITING THE SAME IN THE U.S. MAIL,
FIRST CLASS POSTAGE PREPAID ADDRESSED AS
FOLLOWS:

ATTN: J. RUTLEDGE JOHNSON
ASSISTANT DEPUTY ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, S.C. 29211

SOUTH CAROLINA SUPREME COURT
P.O. BOX 11330
COLUMBIA, S.C. 29211

5-11-16
DATE

John Dykeman 245443
JOHN DYKEMAN
#245443

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
John Dykeman, #245443,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-07-1565

FINAL ORDER OF DISMISSAL

2016 APR 11 PM 4:14
CLERK OF COURT
JUDICIAL CIRCUIT
BEAUFORT COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 19, 2015. Respondent made its return on or about August 18, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, and the prohibition on successive PCR applications.

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 August 24, 2015 and filed September 8, 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 September 25, 2015, serving the above-mentioned Conditional Order of Dismissal on Applicant.

In a document titled "Notice of Motion and Motion in Opposition to Attorney General's Motion for Conditional Order of Dismissal," dated September 16, 2015, Applicant argues that his claim of juror misconduct is newly discovered evidence and is not barred by the statute of limitations.

On October 9, 2015, Applicant sent a proposed “Order to Rescind Conditional Order of Dismissal and Order an Evidentiary Hearing.”

This Court has reviewed Applicant’s responses to the Conditional Order of Dismissal in their 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.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly-discovered evidence. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant alleges that he did not discover the evidence to support his claim of juror misconduct until “well after his 1st and second PCR’s were filed.” An applicant “requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would likely change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.” Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant has failed to set forth facts sufficient to satisfy these requirements. Specifically, Applicant has failed to establish why such alleged evidence could not have been discovered before the trial or during his initial PCR action. Applicant has failed to make such a *prima facie* showing on these elements that he is entitled to relief based on the information set forth and, therefore, this Court finds he is not entitled to an evidentiary hearing in the matter.

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 hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. 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 23 day of March, 2016.

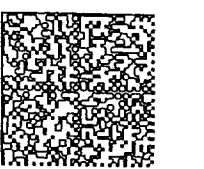


CARMEN T. MULLEN
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.

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