

Clinton McCallum, 805003
BRC Marion 123
4460 Broad Rd
Columbia, SC, 29210

Date 5-4 2016

RECEIVED

2015-CA 26-4184

MAY 19 2016

S.C. SUPREME COURT

Dear Honorable Daniel E. Stearns
South Carolina Supreme Court:

Enclosed please find for filing within
your office of the clerk of court South
Carolina Supreme Court. A original Attach
Copies of Notice of Appeal along with
Affidavit of service and written explanation.
if this written explanation meet your
final approved please sign return to me
a clocked-dated stamped copy.

Respectfully submitted
Clinton McCallum

cc: c.m.
cc: H. D. E. S. C. S. C.
cc: A. G. D.
cc: T. E. K.

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U.S. DEPARTMENT OF JUSTICE

LEGAL MAIL
MAIL ROOM

The state of south Carolina
#1 The Supreme Court

RECEIVED

MAY 19 2016

Appeal from Henry County
Court of common Pleas

S.C. SUPREME COURT

William H. Seals, Jr Circuit Court Judge
CA/ 2015-CP-26-4184

Clinton McCallum

Applicant

VS

state of south Carolina

Respondent

NOTICE OF APPEAL

I Clinton McCallum Hereby Appeal sign
Final order of Dismissal sign on 5-4 2016
by Honorable William H. Seals, Jr circuit court
Judge date of receive by the applicant on
5-5 2016.

s/Clinton McCallum

Clinton McCallum #305003
BRCI Marion 123
4460 Broad River Rd
Columbia, S.C. 29210

Date 5-4 2016

Col S.C. 29210

The State of South Carolina
In The Supreme Court

RECEIVED

MAY 19 2016

Appeal From Horry County
Court of Common Pleas

S.C. SUPREME COURT

William H. Seals, Jr. Circuit Court Judge
C/A/2015-CP-26-4184
Clinton McCallum

Applicant

V S

State of South Carolina

Respondent

Affidavit of Service

I Clinton McCallum hereby serving
A true copy of Notice Written explanation
pursuant to Rule 243(C) SCACR, along
with a true copy of Notice of Appeal by
placing a true copy in the United States
mail address below.

1 Jessica E. Kinard
Attorney General
Post Office Box 11549
Columbia, SC, 29211

(2) Honorable Daniel E
Stearouse
Post Office Box 11380
Columbia, SC, 29211

3 s/Clinton McCallum
386 Redemption Way
McCormick, SC, 29849

Date 5-5-2016



ALAN WILSON
ATTORNEY GENERAL

April 5, 2016

[REDACTED]
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210

Re: [REDACTED] State of South Carolina
2015-CP-26-4184

Dear Mr. [REDACTED]

Enclosed please find a filed copy of Final Order of Dismissal signed by Judge Seals in the above-captioned case.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/nb

Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

~~XXXXXXXXXXXXXXXXXXXX~~

vs

STATE OF SOUTH CAROLINA,

Respondent.

) IN THE COURT OF COMMON PLEAS

) 2015-CP-26-4184

) AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Final Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

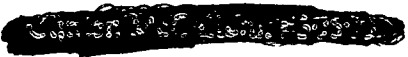
~~XXXXXXXXXXXXXXXXXXXX~~

**Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210**

DATED this 5th day of April, 2016.

Norma Bigbee
Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HORRY



Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-26-4184

FINAL ORDER OF DISMISSAL

HORRY COUNTY
2016 MAR 30 PM 12:43
KELANIE HUGHES-WARR
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed June 5, 2015. The Respondent made its return on or about July 22, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against 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 July 23, 2015 and filed August 11, 2015, provisionally denying and dismissing this action, while giving the Applicant thirty (30) 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 10, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant. On September 30, 2015, Applicant was granted a thirty (30) day extension to submit a response to the conditional order.

Applicant filed a document titled “Applicant Responce [sic] of Objection to Respondent Conditional Order of Dismissal,” on October 20, 2015, in which Applicant argues newly discovered evidence in the form of an affidavit by Earnest J. Vereen, Jr.; involuntary guilty plea because Applicant claims mental incompetency; and that trial counsel was ineffective for failing to request a mental health evaluation.

COPY

This Court has reviewed Applicant's response to the Court's Conditional Order of Dismissal 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.

This Court finds Applicant's claim of alleged "newly-discovered evidence" fails to make a *prima facie* showing that the evidence likely would have changed the outcome at his guilty plea. Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one (1) year of actual discovery or within one (1) year of when, by the exercise of due diligence, such evidence could have been ascertained. 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, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014). Furthermore, in an application for PCR, Applicant must make at least a *prima facie* showing that would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant never specifically sets forth what evidence would change the outcome of his plea. Moreover, as the court noted in Jamison, 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. 410 S.C. at 470, 165 S.E.2d at 130. This Court finds Applicant presents no facts that would require vacation of a knowing and voluntary guilty plea. Therefore, this Court finds Applicant fails to make even a *prima facie* showing that he is entitled to relief on this claim.

Furthermore, this Court submits that the doctrine of *res judicata* bars the Applicant's claims of an involuntary guilty plea and ineffective assistance of counsel. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. Both issues were previously dismissed in Applicant's previous PCR action.

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 21 day of March, 2016



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

 , South Carolina

Jerome Long # 151047

McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Legal mail

South Carolina Supreme Court
Daniel E. Shearouse
Post Office Box 11330
Columbia, S.C. 29211

LEGAL MAIL
MAIL ROOM

RECEIVED

MAY 05 2016

MCCI
MAIL ROOM

THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

MCCORMICK CORRECTIONAL INST.
S.C. DEPARTMENT OF CORRECTIONS