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June 20, 2016

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JUN 23 2016

S.C. SUPREME COURT

Re: Notice of Intent to Appeal from:
Hayward Rogers, #278510, v. State of South Carolina;
Case Number: 2012-CP-32-3237

Dear Sir or Madam:

I was Court Appointed, and I expect appellate defense will probably handle the appeal. Enclosed please find a Notice of Appeal along with a Proof of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance.

Sincerely:

David K. Allen, Esq.

DKA/idi
Enclosures

cc: Mr. Hayward Rogers
Patrick Lowell Schmeckpeper, Esq.

THE SOUTH CAROLINA SUPREME COURT

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

JUN 23 2016
ORIGINAL
S.C. SUPREME COURT

Case No.
(2012-CP-32-3237)

Hayward Rogers,..... Appellant

v.

State of South Carolina, Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed April 29, 2016, sent by the Clerk of Court on May 9, 2016 and received by Counsel on May 12, 2016, and the Order denying Rule 59(e) Motion filed June 13, 2016, sent by the Clerk of Court on June 14, 2016 and received by Counsel on June 16, 2016. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, June 20, 2016.

THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Applicant
3241 P.O. Box (29171)
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Patrick Lowell Schmeckpeper, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

THE SOUTH CAROLINA SUPREME COURT

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

JUN 23 2016

J. Mark Hayes, II, Circuit Court Judge

S.C. SUPREME COURT

Case No.
(2012-CP-32-3237)

Hayward Rogers,..... Appellant

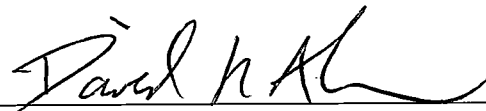
v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, June 20, 2016.

THE ALLEN LAW FIRM, P.A.



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P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2012-CP-32-3237

Hayward L. Rogers,)
S.C. D.C. No. 278510)

Applicant,)

v.)

State of South Carolina)

Respondent.)

ORDER OF DISMISSAL

FILED
2012 APR 29 AM 11:10
LETHA A. CHERRING
CLERK OF COURT
LEXINGTON, SC

This matter comes before this Court by way of an application for post-conviction relief filed August 8, 2012.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the February 1999 term for the Lexington County Grand Jury kidnapping (1999-GS-32-0813); two counts of criminal sexual conduct, first-degree (1999-GS-32-0815; -0818); assault and battery with intent to kill (1999-GS-32-0819); and strong arm robbery (1999-GS-32-0814). William Rast, Esquire, represented Applicant. The State called its case on September 21, 2001; Applicant proceeded to trial and was convicted on all charges as indicted by a jury. The Honorable Marc H. Westbrook sentenced Applicant an aggregate term of life imprisonment without the possibility of parole.

A timely Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in a written opinion. State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). The Remittitur

was returned on September 9, 2004.

First PCR Application: 2004-CP-32-3932

Applicant filed his first PCR application on October 27, 2004, alleging the following grounds

for relief:

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel;
3. Direct appeal issues:
 - a. Conviction obtained by evidence procured throughout unconstitutional search and seizure;
 - b. Conviction by unlawful arrest;
 - c. Failure to disclose evidence favorable to the defendant;
 - d. Denial of impartial jury;
 - e. Denial of impartial judge;
 - f. Denial of speedy trial.

An evidentiary hearing was convened at the Lexington County Courthouse on May 18, 2009, where Applicant amended his application to include the following additional allegations:

1. Ineffective assistance of counsel:
 - a. Counsel never discussed with Applicant the fact that victim was deaf;
 - b. Counsel failed to challenge search warrant ordering that applicant's blood be drawn;
 - i. Counsel should have moved for a suppression hearing because Applicant was not informed of right to attorney and actually requested attorney;
 - ii. Counsel failed to object due to the fact that Applicant's Miranda rights were not discussed with him at the time he gave blood.
 - c. Counsel failed to object to the chain of custody regarding the sweater.
 - d. Counsel failed to challenge evidence taken from purse.
 - e. Counsel never reviewed discovery with Applicant.
 - f. Counsel never discussed with Applicant whether or not Applicant should testify.
 - g. Counsel failed to hire experts on Applicant's behalf, and did not discuss this option with Applicant.
 - h. Counsel failed to file motion for speedy trial.
 - i. Counsel failed to call alibi witnesses.
2. Ineffective assistance of appellate counsel:
 - a. Appellate counsel failed to challenge the denial of directed verdict on appeal.

William Rast, Esquire, represented Applicant. By order filed August 20, 2009, the

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BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Honorable Roger M. Young dismissed the application with prejudice.

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Second PCR Application: 2010-CP-32-3792

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Applicant filed his second application for post-conviction relief on September 3, 2010, alleging the following grounds for relief:

BETH A. CANNIGG
CLERK OF COURT
LEXINGTON, SC

1. Newly discovered evidence;
2. Outrageous government conduct;
 - a. Police tampering with the evidence;
 - b. Illegal interrogations – did not advise Miranda Rights;
3. Subject matter jurisdiction;
4. Appointed trial attorney and PCR attorney misconduct;
 - a. Trial counsel and PCR counsel refused to contact or interview witnesses;
5. Denial of discovery;
 - a. Discovery of interrogation tapes, DNA results, police incident report missing;
6. Actual innocence;
7. Denial of Due Process and Equal Protection of Law.”

The State submitted a Return and Motion to Dismiss on or about December 10, 2010. The Honorable R. Knox McMahon subsequently issued a conditional order of dismissal, dated March 11, 2011, and filed March 16, 2011, provisionally denying and dismissing the application while giving Applicant twenty (20) days to explain why the order should not become final. Following a response by Applicant, Judge McMahon issued a Final Order dated December 29, 2011, and filed January 4, 2012, dismissing the application with prejudice.

Current PCR Application

Applicant filed his third and current PCR application on December 23, 2014, alleging the following grounds for relief:

1. Denial of Due Process and Fundamental Fairness
2. The sentence exceeds the maximum authorized by law
3. The Court was without jurisdiction to impose sentence of ABWIK and CSC First Degree.
4. The evidence of material facts not previously presented and heard that requires vacation of the conviction and sentence.



Applicant submitted an amended application and second amended application on October 16, 2015 and October 12, 2015, respectively, raising the following additional grounds for relief:

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1. Newly discovered evidence

- a. Individual (Ms. Merkyle Blackmon) who drew Applicant's blood for D.N.A. sample was not, and has never been, licensed with the State Board of Nursing. The transcript shows that a witness for the State testified Ms. Blackmon was a nurse.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Before this Court are the records of the Anderson County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; and Applicant's prior post-conviction relief records.

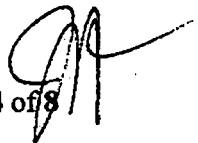
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2014) provides:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).



Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised each of the grounds for relief alleged in this application in his prior post-conviction relief application. The Applicant has failed to present a "sufficient reason" why he could not have raised the current allegations in his previous post-conviction relief applications. Therefore, this application is barred as successive.

Statute of Limitations

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Moreover, ignorance of the statute of limitations for filing a petition for post-conviction relief is not an excuse for late filing. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). Following Applicant's conviction, the Remittitur from his unsuccessful direct appeal was returned on or

about September 9, 2004. Therefore, Applicant was required to file his PCR application on or before September 10, 2005. Applicant filed this application on August 8, 2012, which was well after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, this Court is authorized to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." § 17-27-70(c). Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute of limitations.

Newly Discovered Evidence

Applicant claims that due to newly discovered evidence (the person who originally drew his blood was not licensed as a Nurse) is a sufficient basis for allowing an otherwise untimely and successive PCR to proceed. This allegation is without merit. An Applicant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably 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). The Applicant has failed to show that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. Even if the person who drew Applicant's blood was not, in fact, a licensed nurse; and even if

that fact was not known at trial, the record before this court does not create a sufficient basis for allowing this application to go forward. The record establishes that the procedure was properly supervised and no error or impropriety in the collection of blood was noted. Because Applicant has failed to make even a *prima facie* showing that he was entitled to a new trial based on newly discovered evidence, this allegation must be summarily dismissed.

[Signature follows]

CONCLUSION

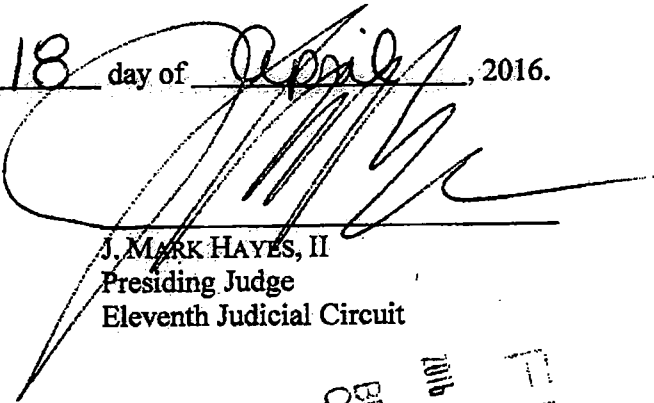
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 18 day of April, 2016.


J. MARK HAYES, II
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

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JUL 6 APR 29 A 11: 18
BEITH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
)
HAYWARD L. ROGERS, #278510)
 Plaintiff,)
 vs.)
)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2012-CP-32-3237

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: David K. Allen Bar No. _____ Address: PO Box 3241 West Columbia, SC 29171 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Patrick Schmeckpeper, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>Plan</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		April 8, 2016 Date submitted	
SECTION III: Motion Fee			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Refs 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			

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 2016
 CLERK OF COURT
 BETHLEHEM, SC

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP3203237

Hayward L Rogers #278510

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

5/9/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **May 9, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**David Kellum Allen The Allen Law Firm, P.A. PO Box 3241
West Columbia, SC 29171**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211**

ATTORNEY(S) FOR THE DEFENDANT(S)

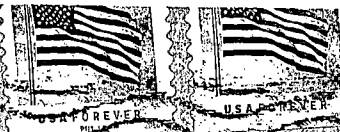
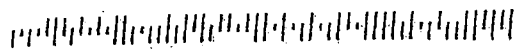
Beth A. Carrigg/kpk

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



COLUMBIA SC 292
TUE 21 JUN 2016 PM

The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, SC 29171

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211