

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP1100192

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S  
MAY 17 10 19 14  
BRANDY W. MCBEE

Steven W Littlejohn #321946 vs. State Of South Carolina

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.
- ACTION DISMISSED (CHECK REASON):  
SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Rule 12(b), SCRPC;  Rule 41(a),  
 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;  Statement of Judgment by the Court:

**Conditional Order of Dismissal**

Dated at Gaffney, South Carolina, this the 14th day of March, 2014.

Court Reporter:

s/ J. Derham Cole

**PRESIDING JUDGE - J. Derham Cole**

This judgment was entered on the the 12th day of March, 2014, and a copy mailed first class this the 17th day of March, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Steven W Littlejohn #321946 Livesay Corr. Inst.  
N2-22A Po Box 580 Una, SC 29378

Alan McCrory Wilson PO Box 11549 Columbia,  
SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Brandy W. McBee*  
Brandy W. McBee-- Clerk of Court

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STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Steven Wayne Littlejohn, #321946,

2013-CP-11-0192

Applicant,

v.

**CONDITIONAL  
ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post conviction relief filed March 22, 2013.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. The Applicant was indicted at the May 2006 term of the Cherokee County Grand Jury for two counts of Possession with Intent to Distribute (PWID) Cocaine near School and/or Playground (06-GS-11-412; -414), one count of Possession with Intent to Distribute Crack Cocaine (06-GS-11-415 and one count of Trafficking in Cocaine, 28-100 g, third offense (06-GS-11-416). He was represented on the charges by Roger J. Poole, Esquire. On May 21, 2007, the Applicant pleaded guilty to two counts of PWID cocaine near School and/or Playground, PWID Cocaine, and Trafficking in Cocaine, second offense. He was sentenced by the Honorable J. Derham Cole to confinement for a period of ten (10) years on each count of the PWID Cocaine near School or Playground, fifteen (15) years on PWID Cocaine, and fifteen (15) years for trafficking in Cocaine. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

2007-CP-11-495

The Applicant subsequently filed an application for post conviction relief (PCR) on August 17, 2007. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel, in that counsel failed to:
  - a. Discharge professional responsibilities,
  - b. Challenge Applicant's arrest and seizure,
  - c. Act as diligent, conscientious advocate,
  - d. Give complete loyalty,
  - e. Keep Applicant's best interest in mind,
  - f. Serve cause in good faith,
  - g. Investigate,
  - h. Do necessary legal research,
  - i. Advice Applicant of rights,
  - j. Explain the issues of the case to the Applicant,
  - k. Consult with Applicant or keep Applicant informed,
  - l. Discuss elements of crime,
  - m. Inform Applicant of or pursue available defenses,
  - n. Explain alternative options,
  - o. Oppose prosecutor's case with any adversarial litigation,
  - p. Call alibi witness, and
  - q. Appeal when Applicant desired such.

An evidentiary hearing was convened into the matter on April 8, 2008 before the Honorable Kenneth G. Goode. Applicant was present and represented by John R. Ferguson, Esquire. Michelle J. Parsons, of the South Carolina Attorney General's Office, represented the Respondent. Following the submission of all testimony, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice by order dated August 6, 2008. The Court found that Applicant's counsel was not ineffective, that his plea was entered into knowingly and voluntarily, and that Applicant had not established any constitutional violations that would require the Court to grant his application.

The Applicant then filed a Rule 59(e) Motion to Alter or Amend the Order of Dismissal. The PCR Court denied this motion on November 19, 2008.

Applicant then subsequently filed a Petition for Writ of Certiorari challenging the post conviction relief court's decision in which he raised eighteen (18) issues. The State filed a Motion to Correct the Record and File a Supplemental Appendix because the plea transcript mistakenly, through a scrivener's error, stated, at one point, the negotiated plea/sentence was for five (5) years. The South Carolina Supreme Court granted this motion in order dated January 21, 2010. The State filed the Supplemental Appendix with the corrected record. In its Order dated January 21, 2010, the Supreme Court also denied the Petition for Writ of Certiorari with regard to half of the Applicant's arguments. Then by order dated June 25, 2010, the Supreme Court denied the other arguments contained in the Applicant's Petition for Writ of Certiorari. The remittitur was sent down on July 22, 2010.

#### **8:10-cv-02535-RMG**

The Applicant then filed a petition for writ of habeas corpus *pro se* on April 15, 2011, where he alleged that his Sixth Amendment rights to effective assistance of counsel and due process right were violated. He also alleged that his due process and equal protection rights were violated because the Supreme Court granted the State's motion to correct the record by amending the guilty plea transcript that erroneously stated Applicant agreed to a sentence of five (5) years confinement. The federal district court granted summary judgment in favor of the respondent and dismissed the habeas petition with prejudice on May 30, 2012.

#### **CURRENT APPLICATION**

In his second and current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct, in that the State filed a motion to correct the record and filed a supplemental appendix.
  - a. Applicant contends that the correction to the transcript constitutes newly and after discovered evidence that would allow him to be granted a new post conviction relief evidentiary hearing.
2. Due process violations, in that the
  - a. "South Carolina Supreme Court granted the State's (Respondent) motion to correct the record and file a supplemental appendix. Petitioner was denied due process because he did not have an opportunity to confront this new evidence as his petition for certiorari was filed, June 25, 2009 in advance of September 9, 2009 granting the State's motion."

Before this Court are the records of the Cherokee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Successiveness

The Court finds that the current application for post conviction relief must be summarily dismissed because it is successive to the previous application for post conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a

previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

#### **Statute of Limitations**

This Court further finds that this Application for post conviction relief should also 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, et. seq.

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 judgment 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). The Applicant was convicted of the offenses he challenges in this Application on May 21, 2007. The Applicant was therefore required to file his application before May 21, 2008. This

Application was filed on March 22, 2013 which was over four (4) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court 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." Therefore, this Court summarily dismisses the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

#### **Due Process/Prosecutorial Misconduct**

The Applicant also alleges that he was denied due process of law and prosecutorial misconduct when the State filed a Motion to Correct the Record and File a Supplemental Appendix. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with *specificity* the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must " . . . specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which 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); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

The State properly moved to correct a scrivener's error in the Applicant's guilty plea transcript. The Court finds the Applicant's constitutional rights have not been violated by this correction. The Applicant has not carried his burden of proving actual prosecutorial misconduct and has failed to make even a *prima facie* showing that his due process rights were violated. Therefore, this allegation should be summarily dismissed

### **Newly and After Discovered Evidence**

Furthermore, this Court finds that Applicant's claims of newly or after discovered evidence must be dismissed, as Applicant has failed to set forth *any* specific allegations of the nature of the evidence. 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). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. A clerical correction to his guilty plea transcript is not newly discovered evidence that the Applicant can then rely on to support his claim for post conviction relief. Therefore, this Court finds that this allegation, and this application, must be dismissed.

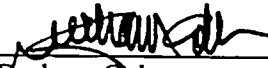
### **III. CONCLUSION**

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The

Applicant shall file any reasons he may have with the Cherokee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division – 7<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 12 day of March, 2014.

  
\_\_\_\_\_  
J. Derham Cole  
Chief Judge for Administrative Purposes  
Seventh Judicial Circuit

Gaffney, South Carolina