

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2012-CP-08-0637

RODNEY LADSON, 262438,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT
AND GRANTING SUPPLEMEN
DISCOVERY

CLERK OF COURT
BERKELEY COUNTY, S.C.

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FILED

Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief filed on February 9, 2012. Respondent submitted a Return and Motion to Dismiss and Conditional Order of Dismissal on July 9, 2013. Thereafter, the Honorable Roger M. Young signed the Conditional Order of Dismissal, which was filed on July 17, 2013. Applicant, through counsel, received service of the Conditional Order of Dismissal on April 28, 2014. Applicant, without the assistance of counsel, responded to the Return and Motion to Dismiss and proposed Conditional Order of Dismissal on July 19, 2013, and Applicant, through counsel, submitted a response to Conditional Order of Dismissal on May 12, 2014. On June 9, 2014, Applicant, through counsel, received notice of the entry of a Form Four Order by the Honorable Stephanie P. McDonald finding that the Conditional Order of Dismissal is rescinded and the case shall be set for an evidentiary hearing.

On August 1, 2014, Applicant, through counsel, filed a Motion for Discovery. On August 8, 2014, Respondent filed a Return to Motion for Discovery. On September 8, 2014, Applicant appeared in front of the Honorable G. Thomas Cooper, Jr. at the Charleston County Courthouse for a Motion Hearing. Applicant was represented by Tricia A. Blanchette, Esquire. Ashleigh R. Wilson, Assistant Attorney General, was

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present, but Rutledge Johnson, Assistant Attorney General, entered his appearance on behalf of the Respondent.

At the start of the hearing, Mr. Johnson informed the Court that the case was being called on the State's Motion to Dismiss, to which Applicant's counsel responded that it was her understanding that the State's Motion to Dismiss had been addressed in the Order issued by Judge McDonald and that the case was being called on Applicant's Motion for Discovery. The Honorable G. Thomas Cooper, Jr. determined that he could not hear Applicant's Motion for Discovery until the matter of the State's Motion to Dismiss was properly resolved finding that it "presented a legal issue." Applicant's counsel clarified with the Court that Applicant's Motion for Discovery was not being heard and requested that she have the opportunity to be heard on the Motion at a later date. The Court instructed both parties to submit a Brief and/or proposed Order. On October 10, 2014, the Honorable G. Thomas Cooper, Jr. issued an Order denying the State's Motion to Dismiss and ordering that a hearing be held on Applicant's pending Discovery Motion.

On December 9, 2014, a motion hearing was held in front of the Honorable J.C. Nicholson, Jr., at the Charleston County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Rutledge Johnson, Assistant Attorney General. Applicant's counsel provided the Court with the basis for the discovery request.

On December 29, 2014, the Honorable J.C. Nicholson, Jr., issued an Order for Discovery finding that Applicant shall be allowed to issue subpoenas to the following offices or agencies for production of Applicant's file, as follows:

1. A complete copy of the State Law Enforcement Agency (SLED) file.
2. A complete copy of Applicant's file from Michael A. Brown, Esquire.
3. If Michael A. Brown, Esquire, does not have a file containing the Rule 5, SCRCrimP, materials and complete case documents, a complete copy of Applicant's criminal file created by the Berkeley County Solicitor's Office.
4. If not contained in the above files, a complete copy of the coroner's file, including but not limited to investigative notes, interviews, statements, medical records, and autopsy report(s).

On June 16, 2015, Applicant, through counsel, submitted a Supplemental Motion for Discovery. On July 1, 2015, Respondent filed a Motion for Summary Judgment. On July 22, 2015, a motion hearing was held in front of the Honorable Roger E. Henderson at the Charleston County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Rutledge Johnson, Assistant Attorney General.

After hearing argument from both parties, this Court took the matter under advisement. Thereafter, Applicant's counsel was instructed to submit an Order, from which this Order follows.

Findings

Based upon the argument set forth in Respondent's Motion for Summary Judgment and the arguments made by both parties at the hearing, this Court denies Respondent's Motion for Summary Judgment. On June 2, 2014, the Honorable Stephanie P. McDonald issued a Form Four Order, which held: "The Conditional Order of Dismissal is hereby rescinded; case shall be set for an evidentiary hearing." Respondent did not file a Rule 59, SCRCP, or Rule 60, SCRCP, Motion or an interlocutory appeal following the issuance of Judge McDonald's Order.

This Court finds that Judge McDonald's Order holding that an evidentiary hearing shall be set is controlling.¹ Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). Additionally, on December 29, 2014, the Honorable J. Nicholson Jr. issued an Order for Discovery to ensure that Applicant could properly prepare for the evidentiary hearing that Judge McDonald ordered be held and as is addressed below, Applicant is presently in the middle of the discovery process. Therefore, it would be improper for this Court to set aside the Order of Judge McDonald for an evidentiary hearing.

Furthermore, based upon the filed motion and explanation provided at the motion hearing, this Court finds that Applicant's request for supplemental discovery shall be granted. Pursuant to S.C. Code Ann. §17-27-150(a) (2008), Applicant shall be allowed to issue a subpoena to the Berkeley County Sheriff's Department for a complete copy of the file generated in Applicant's case. Additionally, Applicant shall be allowed to serve Interrogatories, pursuant to Rule 33, SCRPC, and/or Request for Admission, pursuant to Rule 36, SCRPC, on SLED and the Berkeley County Sheriff's Department to determine the following: 1) what agency handled the crime scene investigation, and if there is any additional documentation of such; 2) what agency handled the ballistic trajectory investigation and if there is any documentation or evidence resulting from such; 3) verification of what evidentiary items were not tested by SLED, the reason such items were not tested and if the items have been maintained at SLED, destroyed or returned to Berkeley County Sheriff's Department; and 4) if there is additional DNA evidence that is

¹ By written Order dated October 10, 2014, the Honorable G. Thomas Cooper, Jr. issued an Order with this same finding.

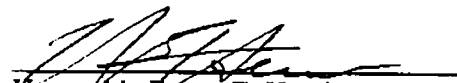
available to be tested.² This Court finds that the use of Interrogatories and/or Request for Admission will ensure that unnecessary witnesses are not called at the evidentiary, allow for the resolution of matters at issue prior to the evidentiary hearing, and expedite the completion of an evidentiary hearing.

IT IS THEREFORE ORDERED:

1. That this Court finds that the State's Motion for Summary Judgment is denied.
2. That Applicant's Motion for Supplemental Discovery is granted.
3. That each agency in receipt of Applicant's discovery requests shall comply within the time specified and in accordance with Rule 33, SCRCP, and Rule 36, SCRCP, without further Order from this Court.

AND, IT IS SO ORDERED this 30th day of July, 2015.

Chesterfield, South Carolina


Honorable Roger E. Henderson
Presiding Circuit Court Judge

² This Court finds that the Interrogatories and/or Request for Admission should be served upon each agency listed and shall be copied to the Office of the Attorney General, but the Office of the Attorney General is not responsible for responding as such is the responsibility of each agency.