

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM LANCASTER COUNTY
COURT OF GENERAL SESSIONS

S.C. SUPREME COURT

HON: BRIAN M. GIBBONS, CIRCUIT COURT JUDGE

CASE NO. 2003-GS-29-1100, 1101

TERRELL C. FLOOD,....., APPELLANT,

Vs.

STATE OF S.C.,....., RESPONDENT.

NOTICE OF APPEAL

TERRELL C. FLOOD APPEALS THE ORDER OF DISMISSAL OF THE
HONORABLE BRIAN M. GIBBONS, DATED SEPTEMBER 13, 2016. APPELLANT
RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER ON OCTOBER 31,
2016, BY WAY OF SIGNING FOR FROM THE PRISON MAIL ROOM OFFICIAL.

NOVEMBER 07, 2016

Terrell Flood
TERRELL C. FLOOD. 302995
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
APPELLANT

OTHER COUNSEL:

LISA G. COLLINS
DEPUTY SOLICITOR
PO BOX 607
LANCASTER, S.C. 29721
RESPONDENT

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CERTIFICATE OF SERVICE

I, TERRELL C. FLOOD CERTIFY THAT I SERVED A TRUE COPY OF THE NOTICE OF APPEAL AND THE CERTIFICATE OF SERVICE TO RESPONDENT BY WAY OF U.S. POSTAL MAIL, PREPAID POSTAGE, ADDRESSED TO DEP. SOLICITOR LISA G. COLLINS, Esq., PO BX. 607, LANCASTER, S.C. 29721, ON THIS 7th DAY OF NOVEMBER 2016, BY PERSONALLY DELIVERING IT TO THE PRISON MAIL ROOM OFFICIALS AS IT BEING FILED ONCE TURNED OVER TO THE PRISON OFFICIALS, etc., BENEFITING ACCORDINGLY TO THE HOUSTON V. LACK LAW, etc., AND VERIFIED ON THIS 7th DAY OF NOVEMBER 2016, BY DATE STAMP STATING DATE RECEIVED BY THE MAIL ROOM OFFICIAL.

NOVEMBER 07, 2016

Terrell Flood
Xs/ _____
TERRELL C. FLOOD
APPELLANT
990 WISACKY HWY.
BISHOPVILLE, S.C 29010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
 Terrell Flood, #302995,)
)
 Petitioner,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF GENERAL SESSIONS
 SIXTH JUDICIAL CIRCUIT

2003-GS-29-1100, 1101

ORDER OF DISMISSAL

FILED
 OFFICE OF CLERK
 OF COURT
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 CLERK OF COURT
 LANCASTER, SC

This matter comes before this Court by way of a filing captioned "Motion for sentence reduction and consideration based upon evidence that makes the conviction unreliable, etc., see attachments" filed September 28, 2012. Respondent filed its "Motion for Summary Dismissal" on August 18, 2016, requesting the motion be summarily denied and dismissed. Petitioner subsequently filed a responsive letter on September 7, 2016. This Court has reviewed all of the pertinent documents and filings and finds the following:

I. Facts of Case and Procedural History

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from this Court.

Jeff Hammond
 JEFF HAMMOND
 CLERK OF COMMON PLEAS
 AND GENERAL SESSIONS COURT
 LANCASTER COUNTY, S.C.

During the early morning hours of August 15, 2003, police officers executed a search warrant at a crack house which was the residence of Lewis Stevenson in Heath Springs, Lancaster County, South Carolina. The house was occupied by Stevenson, Flood (Petitioner) and Jarvis Anthony. While the officers were attempting to break through the front door of the house, Petitioner, who was sleeping on a couch in the front room, awakened and fired three shots at the door. Deputy Stacey Roberts was struck twice, with one round penetrating the deputy's vest and causing a collapsed lung. Petitioner was arrested. After Petitioner gave a statement to the officers

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concerning the incident, they obtained a second search warrant, returned to the house, and seized two pistols, some crack cocaine found in Petitioner's clothing and other items.

Petitioner was indicted at the September 2003 term of the Lancaster County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) (2003-GS-29-1100), Possession of a Firearm during the Commission of a Violent Crime (2003-GS-29-1101), and Possession of Crack Cocaine – 1st offense (2003-GS-29-1102). Petitioner was represented by Ross Burton, Esquire. On June 14, 2004, Petitioner proceeded to trial. Petitioner, as well as Stevenson and Anthony, testified at trial. Petitioner testified that he was a crack dealer, the residence was a crack house, and he fired three shots because he thought his girlfriend's ex-boyfriend was attempting to break into the house to harm him. On June 16, 2004 he was found guilty of all charges. Petitioner was sentenced by the Honorable Paul M. Burch to concurrent terms of confinement for a period of twenty years for ABWIK, and five years on the remaining charges.

A timely notice of appeal was filed, and an appeal was perfected by Tara S. Taggart, Esquire, in the form of an Anders brief. The appeal was dismissed by the South Carolina Court of Appeals by written Order. State v. Flood, Op. No. 2006-UP-182 (filed April 6, 2006). The Remittitur was issued on April 25, 2006.

II. Prior Collateral Actions

A. PCR Application (Case No. 2006-CP-29-0897)

Petitioner filed a Post-Conviction Relief (PCR) Application on July 16, 2006. An evidentiary hearing was convened on August 27, 2007, at the Lancaster County Courthouse, at which Petitioner was present and represented by Leah Moody, Esquire. At that hearing, the Petitioner raised the following issue: ineffective assistance of counsel.



This Court denied and dismissed Petitioner's Application by written Order on September 19, 2007. Petitioner appealed from the Court's decision, and the South Carolina Supreme Court denied the Petition on October 8, 2008. The Remittitur was sent on October 24, 2008.

B. Writ of Habeas Corpus (Case No. 3:09-375-JFA-JR)

Petitioner next filed a Petition for a Writ of Habeas Corpus on April 17, 2009. The United States District Court for the District of South Carolina accepted the Report and Recommendation of the Federal Magistrate and dismissed the Petition on April 1, 2010. Petitioner filed an appeal with the Fourth Circuit Court of Appeals which was dismissed on December 6, 2010.

C. Second PCR Application (Case No. 2011-CP-29-0194)

Petitioner then filed a second PCR Application on February 8, 2011. The State filed a Return and Motion to Dismiss on December 19, 2011. The Honorable J. Ernest Kinard, Jr. signed a Conditional Order of Dismissal on December 28, 2011, provisionally dismissing the Application for being successive to Petitioner's prior Application, for failing to state a cognizable claim for relief, and for being filed outside of the statute of limitations for PCR actions. Petitioner filed a Response objecting to the Court's Conditional Order; however, on June 17, 2012, this Court entered a Final Order dismissing the application.

III. Current Petition

Petitioner argues in his current Motion that he should be granted a reduction in sentence due to discrepancies in the forensic reports regarding the serial number of the firearm that was used. Petitioner argues that the serial number of the gun listed on the arrest warrant does not match the serial number of the gun listed on the SLED forensic report, and that this discrepancy entitles him to a reduction in sentence. The serial number listed on the warrant is 0306801, while the serial number listed on the SLED report is D307801.



This Court finds that the time is well past for Petitioner to file a motion for a sentence reduction. Rule 29 of the South Carolina Criminal Rules states "Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." As Petitioner was convicted of these offenses in 2004, this filing was submitted well past the ten day window. As such, this Court hereby denies and dismisses Petitioner's Motion as untimely.

Even if this Court were to interpret Petitioner's motion as based off of alleged newly-discovered evidence, Petitioner's argument still fails, and this Court finds the motion should be denied and dismissed. Traditionally, in South Carolina, "[t]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." McCoy v. State, 401 S.C. 363, 368, 737 S.E.2d 623, 625 (2013).

Although in the instant action, Petitioner is merely requesting a sentence reduction and not a new trial, the analysis would be the same. Because the forensic reports and warrant were available to Petitioner and his defense counsel prior to trial, any discrepancies in the reports would have been discoverable then. Additionally, Petitioner admitted at trial that he fired through the door, so this Court finds it highly unlikely any alleged discrepancies in the forensic reports, particularly a clerical error, would change the outcome of the trial. Finally, the minor discrepancy in the notation of the gun's serial number certainly is not material to the issue of Petitioner's guilt or innocence. As such, this Court finds Petitioner's Motion has failed to meet the first four factors of the McCoy test, and the Motion is hereby denied and dismissed.

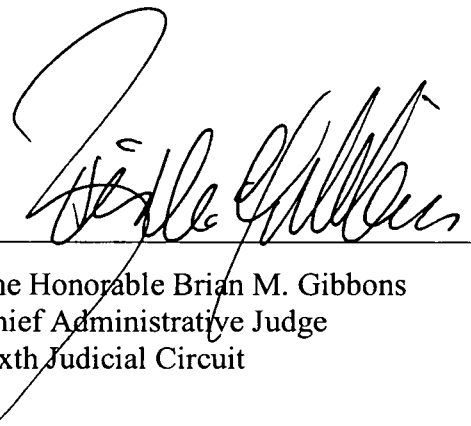
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Finally, this Court finds the Motion should be denied under the doctrine of *Res Judicata*. Under the doctrine of *Res Judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (emphasis added). Petitioner raised this same issue as Ground Ten of his Federal Habeas Corpus action. As such, that issue has already been raised and ruled upon.

IT IS THEREFORE ORDERED that, for the reasons set forth herein, Petitioner's Motion for resentencing is hereby denied and dismissed with prejudice.

This Court cautions Petitioner that he must file and serve a Notice of Appeal within ten (10) days from the receipt of written notice of entry or judgment to secure the appropriate appellate review. See Rule 203, SCACR.

AND IT IS SO ORDERED this 13 day of Sept, 2016.



The Honorable Brian M. Gibbons
Chief Administrative Judge
Sixth Judicial Circuit


_____, South Carolina.

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S.C. SUPREME COURT
HON: D.E. SHEAROUSE
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LEGAL MAIL
RETURN IS REQUESTED



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