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DEC 22 2016

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Vincent J. Boseman, #271530,

Appellant,

VS.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Vincent J. Boseman, #271530, appeals the order of the Honorable DeAndrea G. Benjamin, dated December 1, 2016. Appellant received written notice of entry of this order on December 9, 2016, a copy of which is attached.

December, 20, 2016.

C/A No: 2014-CP-4001089

OTHER COUNSEL OF RECORD

State of South Carolina
Office of the State Attorney General
Post Office Box 11549
Columbia, SC. 29211

RESPONDENT

Vincent J. Boseman
SCDC No: 271530
Lee Correctional Inst.
990 Wisacky Highway
Bishopville, SC. 29010

APPELLANT

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNRY

Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

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Vincent J. Boseman, #271530

Appellant,

VS.

State Of South Carolina,

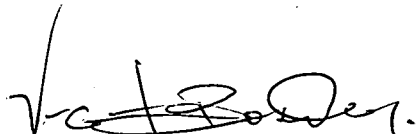
Respondent.

CERTIFICATE OF SERVICE

I, VINCENT J. BOSEMAN, #271530, hereby, declares under the penalty of perjury, that on this date, appellant has served a copy of Appellant's NOTICE OF APPEAL, upon the respondent, by placing said copy, in prison officials mailroom, for depositing in the United States Mail, requesting First Class Postage, to be affixed, and addressed as indicated below:

December 20, 2016.

C/A No: 2014-CP-4001089



Vincent J. Boseman
SCDC No: 271530
Lee Correctional Inst.
990 Wisacky Highway
Bishopville, SC. 29010

State of South Carolina
State Attorney General Office
P.O. Box 11549
Columbia, SC. 29211
RESPONDENT

RICHLAND COUNTY COURT OF COMMON PLEAS
P.O. Box 2766
Columbia, SC. 29202

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4001089

Vincent #271530 Boseman

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Non-suit); 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 _____

RICHLAND COUNTY
 DEANETTE W. BRIDGES
 CLERK OF COURT
 2016 DEC -9 PM 3:21
 FILED

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
		\$
		\$
		\$

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 _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Dec, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Vincent #271530 Boseman

Jessica Elizabeth Kinard

Vincent #271530 Boseman

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Bridges

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vincent J. Boseman, #271530,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2014-CP-40-01089

FINAL ORDER OF DISMISSAL

2016 DEC -5 AM 10:39
JENNETTE M. HERRIDGE
C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 21, 2014. Respondent made its Return and Motion to Dismiss on or about May 8, 2014, requesting that 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 October 27, 2014 and filed October 29, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 November 20, 2015, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Motion for a New Trial" and "Affidavit of Vincent Boseman, in Support of Motion for New Trial" on November 10, 2015, which was originally filed by Applicant on or about March 28, 2014, shortly after he filed the Post-Conviction Relief Application. Applicant argues in support of a new trial that he found newly discovered evidence

in December 2013, in the form of a police statement by a state witness who testified at his trial, which contradicts the testimony of the witness at the trial.

This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant still fails to state a cause of action upon which relief can be granted, and has presented no reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly-discovered evidence. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant alleges that “at the time of the trial in 2000, I did not have the documentation of the Police Statement given by State Witness Carl Holmes, and therefore did not know that it was within my scope of defense to prove Witness Holmes had previously told a different story to the Police about the alleged crime.” An applicant “requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would likely 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 set forth facts sufficient to satisfy these requirements. Specifically, Applicant has failed to establish why such alleged evidence could not have been discovered before the trial or during his initial PCR action. Furthermore, Applicant was ultimately convicted of these charges in a second trial that in 2003 in which the witness, Carl Holmes, never testified. Applicant has failed to make such a *prima facie* showing on these elements that he is entitled to

relief based on the information set forth and, therefore, this Court finds he is not entitled to an evidentiary hearing in the matter.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR 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 1 day of Dec, 2016.



DEANDREA G. BENJAMIN
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

