

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 06 2017

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

CASE NO. 2016-002282

TERRELL FLOOD,.....PETITIONER,

V.

THE STATE,.....RESPONDENT.

MOTION TO COMPEL/AND
REQUIRED EXPLANATION TO
THE COURT, etc.

COMESNOW, TERRELL FLOOD, 302995, BY WAY WITH A pro se MOTION TO COMPEL THE COURT TO APPOINT ASSISTANCE BY A COUNSEL AND OR ISSUE AN ORDER TO THE INDENT DEFENSE TO PROVIDE PETITIONER WITH ASSISTANCE TO COMPLY WITH THE REQUIRED RULES OF THE COURT IN ORDER FOR HIM TO HAVE HIS CASE ON APPEAL REVIEWED BY THE COURT.

THE PETITIONER HAD FILED A MOTION FOR RECONSIDERATION AND MOTION TO CORRECT HIS SENTENCES DUE TOT HE SENTENCES BEING ERRONEOUS IMPOSED BASE ON STRUCTURE OF HIS SENTENCES AND WITH THE SENTENCES OUT OF COMPLIANCE THE WELL SETTLED LAWS OF THE STATE OF SOUTH CAROLINA SENTENCING GUIDELINES, etc. AS NOTED, sub. jud., THE COURT ISSUED AN ORDER DENYING THE MOTION FILED TO THE LOWER WITHOUT RENDERING AN ORDER LISTING FINDING OF FACTS AND GIVING A CONCLUSION OF LAWS TO THE LEGAL ISSUES PRESENTED, etc. THEREAFTER, THE PETITIONER APPEALED THIS ORDER OF DISMISSAL TOT HE COURT OF APPEALS ACCORDINGLY TO THE RIGHTS TO HAVE THIS ISSUES REVIEWED BY THE APPELLATE COURT AS A WAY OF A RIGHT. THE PETITIONER HOWEVER DO POINT OUT TO THE COURT THAT THERE HAVE NOT BEEN A HEARING TRANSCRIPT ACCUMULATED TO THIS MOTION MATTERS, AND FOR THE SAKE OF THE COURT REQUIRING A TRANSCRIPT FROM THIS CASE MATTER WILL ONLY BE A TRIAL TRANSCRIPT AND NOTHING MORE DUE

TO THE FACTS EXISTING THAT NO HEARING IN THIS MATTERS WAS HELD, AND BASED UPON THIS ERROR IN ITSELF THE LOWER COURT MADE AN ADVERSE RULING AGAINST PETITIONER AND SIDE WITH THE RESPONDENT WITHOUT AFFORDING TO HIM DUE PROCESS AND PROTECTION TO HIS CONSTITUTIONAL RIGHTS TO BRING HIS MATTER TOT HE COURT WHEREAS, THE PETITIONER IS BEING PUNISHED IN A CRUEL AND UNUSUAL WAY BASED UPON HIS SENTENCES. IMPOSED BY THE SENTENCING COURT AND THE RESPONDENT HAS PREVAILED IN THIS MATTER USING THE METHODS OF A TORTUOUS NATURE. IN THE ARGUING TO THE COURT AGAINST THE PETITIONER, WHEREAS, THE RESPONDENT KNOWS EXPLICITLY WELL AND IS VERY AWARE OF THE ERRORS EXISTING IN THE PETITIONER'S SENTENCE THAT ARE NOT CONSISTED WITH THE S.C. SENTENCING GUIDELINES, etc. SEE BOYD V. STATE, supra., AND SEE THE CONTROL SUBSTANCE ACTS, ie al.

THE COURT ISSUED AN ORDER ON DECEMBER 14, 2016, REQUIRING THE PETITIONER TO FILED THE MOTIONS, etc. TO THE COURT WITH A LETTER AND THIS IS A PREVENTIVE STONE IN THE PETITIONER'S PATH BECAUSE THERE WAS NOT A HEARING HELD TO THIS RESPECTFUL MATTER AND THE RECORDS OF THIS MATTER ONLY IS BE FILES LOCATED IN THE LOWER COURT CLERK'S OFFICE, THE ORDER OF THE LOWER COURT WAS FILED WITH THE NOTICE OF APPEAL AND THE CERTIFICATE OF SERVICE AND THE COURT WAS PROVIDED THE SAME, THEREFORE, THE PETITIONER RESPECTFULLY REQUEST THAT THE ASSISTANCE FROM AN ATTORNEY BE GRANTED AND THEREFORE HAVING THE APPEAL TO BE FILED IN THE ACCORDANCE THE RESPECTFUL COURT RULES AS IS NOTED.


CONCLUSION

WHEREAS, THE PETITIONER RESPECTFULLY REQUEST THAT THE COURT PROVIDE TO HIM THE NECESSARY ASSISTANCE FROM THE APPROPRIATE COURT TRIBUNALS SO THAT HIS APPEAL CAN BE REVIEWED BY THE COURT ACCORDINGLY TO THE WELL SETTLED LAWS AND RULES, etc.

PETITIONER PRAY THIS MOTION BE GRANTED.

DECEMBER 22, 2016

RESPECTFULLY SUBMITTED,

s/ 

TERRELL FLOOD
990 WISACKY HWY.
BISHOPVILLE, S.C 29010



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 14, 2016

Terrell Flood, 302995
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Re: Terrell C. Flood v. The State
Appellate Case No. 2016-002282

RECEIVED

JAN 06 2017

SC Court of Appeals

Dear Mr. Flood:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter. Please be advised, all parties, including the Court, must be copied on all correspondence regarding the transcript.

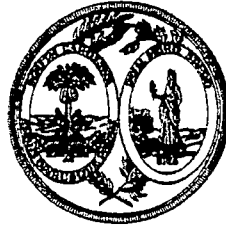
Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Alan McCrory Wilson, Esquire
David A. Spencer, Esquire

State of South Carolina
Solicitor, Sixth Judicial Circuit



CHESTER/FAIRFIELD
LANCASTER
RANDY E. NEWMAN, JR., SOLICITOR

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SEP 16 2016

GENERAL COUNSEL

September 14, 2016

Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29210

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JAN 06 2017

SC Court of Appeals

Re: Service of Order of Dismissal on SCDC Inmate Terrell Flood SCDC # 302995
Date of Birth of Terrell Flood: March 11, 1982
Social Security Number of Terrell Clifford Flood: [REDACTED]

Dear Sir or Madam:

Enclosed please find two (2) certified true copies of the Order of Dismissal issued by the Honorable Brian M. Gibbons in the above-referenced case. Please have Mr. Flood served with the Order of Dismissal. He is currently an inmate at the Lee Correctional Institution. I have also enclosed an Affidavit of Personal Service. Please have the individual who serves Mr. Flood with the Order sign the Affidavit of Personal Service, have it notarized, and return it to me in the enclosed, self-addressed, stamped envelope. Thank you for your assistance in this matter.

If you have any questions please do not hesitate to call me at my direct line (803) 416-9478. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Collins", written over a horizontal line.

Lisa G. Collins
Deputy Solicitor
Sixth Judicial Circuit

Enclosures

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
RECEIVED

JAN 06 2017

SC Court of Appeals

FILED
 OFFICE OF CLERK
 OF COURT
 2016 SEP 13 PM 2:07
 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:

CERTIFIED TO BE A TRUE COPY

I. Facts of Case and Procedural History

Jeff Hammond

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

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

[Handwritten signature]

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.


A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a series of loops and a horizontal stroke at the bottom.

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.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS

CASE NO. 2016-002282

TERRELL FLOOD.....PETITIONER

V.

THE STATE.....RESPONDENT.

CERTIFICATE OF SERVICE

I, TERRELL FLOOD, 302995, CERTIFY THAT I DID SERVED THE RESPONDENT A TRUE COPY OF THE SAME, MOTION TO COMPEL, WITH REQUIRED EXPLANATION TO THE COURT, BY WAY OF U.S. MAIL, POSTAGE PREPAID, TO THE RESPONDENT'S ADDRESS: AS PO BOX 11549, COLUMBIA, S.C. 29211-1549, LISTING RESPONDENT'S COUNSELS: ALAN McCRORY, Esq., DAVID SPENCER, Esq. ON THIS 22nd DAY OF DECEMBER 2016, BY PERSONALLY DELIVERING IT TO THE PRISON MAIL ROOM OFFICIALS FOR VERIFICATIONS AND POSTAGE PURCHASING, etc., ON DECEMBER 22, 2016.

DECEMBER 22, 2016

s/ *Terrell Flood*
TERRELL FLOOD
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
pro se PETITIONER

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SC Court of Appeals

TERRELL FLOOD, 302995
LEE C.I./P5A-248
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

DECEMBER 22, 2016

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JAN 06 2017

SC Court of Appeals

SC Ct. OF App.
HON J.A. KITCHINGS, CLERK
PO BOX 11629
COLUMBIA, S.C. 29211

RE: TERRELL C. FLOOD V. THE STATE, C/A NO.
ENCLOSURES.

2016-002282,

DEAR MS. KITCHINGS:

PLEASE ALLOW MY CORRESPONDENCE TO SERVE AS MY POSITION TO COMPLY WITH THE NOTICE YOUR OFFICE SENT TO ME ON DECEMBER 14, 2016 THAT I RECEIVED THROUGH THE MAIL ON DECEMBER 19, 2016, I AM REQUIRED TO FOLLOW RULE 407, SCACR, etc., HOWEVER, I AM pro se LITIGATE AND I AM NOT ABLE TO AFFORD TO PAY FOR A TRANSCRIPT NOR AM I ABLE TO AFFORD THE MATERIALS TO PREPARE THE APPEAL CASE BY THEREFORE I AM MOVING IN THE COURT TO APPOINT AN ATTORNEY AND OR ISSUE AN ORDER TO THE INDIGENT DEFENSE OFFICE COUNSEL TO ASSIST ME IN THIS MATTER THAT I AM ON AN APPEAL FOR SO THAT THE RULES OF THE COURT WILL BE COMPLIED TO.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND ASSISTANCE GIVEN TO ME IN THIS CRUX MATTERS AND I LOOK FORWARD IN HEARING FROM IN THIS VERY NEAR FUTURE.

AGAIN THANK YOU!!!
ENCLOSURES:

RESPECTFULLY SUBMITTED,

s/

Terrell Flood

TERRELL FLOOD 302995
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
APPELLANT, pro se

cc: ALAN McCRORY, Esq.
DAVID A. SPENCER, Esq.
FILES/tf

Tennell Flood #302995
Lee C.I./F-5 A-248
990 Wisacky Hwy,
Bishopville, SC 29010



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SC Court of Appeals

Hon. J. A. Kitchings, (Clerk of Court)
P.O. Box 11629
Columbia, SC 29211

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