

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Spartanburg County
Court of Common Pleas

JAN 17 2017

J. Mark Hayes, III, Presiding

S.C. SUPREME COURT

Jeffrey E. Jeter)	C/A No.2011-CP-42-1967
Appellant,)	
-vs-)	NOTICE OF APPEAL
State of South Carolina)	
Respondent,)	
_____)	

NOTICE IS HEREBY GIVEN, above captioned Appellant, Jeffrey E. Jeter appeals the Order of dismissal that was entered in the above captioned on October 31, 2016. Appellant filed a Rule 52(b) & 59(e), SCRCF motion that was denied December 13, 2016 by the Honorable J. Mark Hayes, III, circuit court judge,

A copy of [both] Orders are attached hereto.

Respectfully Submitted,

/s/ 

Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas
C/A No. 2011-CP-42-1967
J. Mark Hayes, III, Presiding

RECEIVED

JAN 17 2017

S.C. SUPREME COURT

Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondents,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Notice of Appeal on the Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211. This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 9 day of January 2017.

Sworn to and Subscribed Before Me

this 9th day of January 2017.

Doug C. Merchant
NOTARY PUBLIC

My Comm. Expires 1-23-2023

Respectfully Submitted,

/s/ *Jeffrey E. Jeter* 131471
Jeffrey E. Jeter
Appellant, pro-se

cc/file
cc/Daniel Shearouse, Clerk
cc/Donald J. Zelenka

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Jeffrey Eugene Jeter, #131471,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

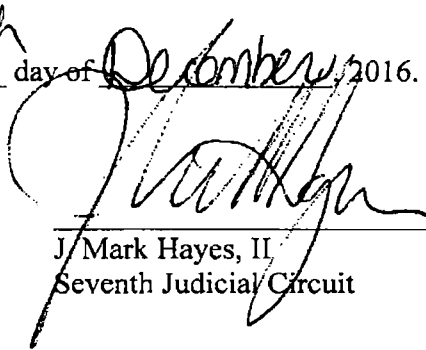
2011-CP-42-1967

ORDER

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Alter/Amend and Reconsider Judgment Pursuant to: Rule(s) 52(b) and 59(e), SCRCiv.P." The Respondent made its Return to this Motion on December 6, 2016.

The Order Denying Applicant's 60(b), SCRCP Motion in this matter was signed by me on October 31, 2016. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order Denying Applicant's 60(b), SCRCP Motion, which was signed and then filed October 31, 2016, shall stand as it was written.

AND IT IS SO ORDERED this 12th day of December, 2016.



J. Mark Hayes, II
Seventh Judicial Circuit

Spartanburg, South Carolina

2016 DEC 13 AM 9:50
A. HORTON BLAIR, III
CLERK OF COURT

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Jeffrey Eugene Jeter
Applicant # 131471

CASE # DICR 2-1967

VS

CERTIFICATE OF SERVICE

Shel
Respondent

I certify that, on this date, I served a copy of the

In this action dated

10-31-16 on 10-31-16 Debra Kemping App. Rule 60(b) SCRP Motion

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Adrienne Hawthorn
Epicia Olive
Jonathan Bonds

10-31-16

(Date)

Carrie Seaf
(Signature)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Jeffrey Eugene Jeter, #131471)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SEVENTH JUDICIAL CIRCUIT

C/A No.: 2011-CP-42-1967

**ORDER DENYING APPLICANT'S
 RULE 60(b), SCRPC MOTION**

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 OCT 21 PM 1:21
 M. HOPKINS-KILEY

This matter comes before the Court by way of Applicant's Motion for Relief from Judgment or Order Pursuant to Rule 60(b), SCRPC, filed February 22, 2016 and June 14, 2016. Respondent would submit the following:

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2009 term of the Spartanburg County Grand Jury for five counts of forgery less than \$5,000 (09-GS-42-1413, -1414, -1415, -1416, and -1802), two counts of receiving stolen goods (09-GS-42-1419, and -1420), and obtaining money by false pretenses (09-GS-42-1421). He was subsequently indicted in October 2010 for two counts of petit larceny – 3rd or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Applicant pleaded guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money by false pretenses, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Applicant to ten years for the four remaining forgery charges, to be served consecutively to the other sentences

and Applicant's probation revocation, for an aggregate sentence of forty years. Applicant filed a *pro se* Motion for Resentencing. Following a hearing, Judge Couch denied the motion on December 17, 2010. A timely notice of appeal was filed, but the South Carolina Court of Appeals dismissed the appeal on December 2, 2010, for a failure to demonstrate any issues preserved for appellate review. The Remittitur was returned on December 21, 2010.

Applicant then filed an Application for Post-Conviction Relief (PCR) on May 2, 2011. Respondent made its Return on May 2, 2012. In his Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. A conflict of interest existed because Counsel (James Cheek) is associated with the Spartanburg Community Memorial Committee, which was a victim in the case and Clay Allen insured Applicant that James Cheek would not have anything to do with his case,
 - b. Applicant never received a copy of his discovery materials,
 - c. Counsel failed to object to the excessive sentence give by the Court when it exceeded the maximum authorized by law,
 - d. Counsel failed to file a Motion to withdraw guilty plea when the court failed to follow the State's recommendation,
 - e. Applicant signed a legally binding contract with the solicitor's office regarding a plea offer, which was not enforced.

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse before the undersigned. Applicant was present at the hearing and represented by Jonathan C. Bonds, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Following the hearing, Applicant's PCR application was denied and dismissed by written order filed January 18, 2013.



Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense, filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied the petition by written order dated August 21, 2014. The Remittitur was returned to the Circuit Court on September 8, 2014.

FINDINGS OF FACT AND CONCLUSION OF LAW

Rule 60(b)(3), SCRCP, provides that the Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(5), SCRCP, provides that the Court may relieve a party from a final judgment where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." In a motion seeking relief pursuant to Rule 60(b), SCRCP, the movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRCP, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Applicant alleges his plea counsel prevented him from fully and fairly presenting his case. He alleges that an offer was made to him on October 8, 2009, that his plea counsel did not inform him of. Applicant also alleges plea counsel had a conflict of interest and that he failed to argue or advise him that the charges constituted a spree. Applicant also alleges his sentence was unconstitutionally enhanced. Specifically, Applicant alleges his prior forgery conviction was more than ten years old, and he was never informed that the offenses were charged as third or



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M. HOPE BLAKELY

subsequent or that he could receive consecutive sentences. He states he received no benefit from pleading guilty and alleges that he could have received less time if he had gone to trial.

Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to vacate its January 16, 2013, order. Applicant makes no specific allegations of any mistake, inadvertence, surprise, or excusable neglect that would entitle him to relief. Second, there are no allegations of any "newly discovered" evidence is or whether the evidence meets the requirements of after-discovered evidence. Third, Applicant makes no specific allegations of fraud, misrepresentation, or other misconduct that would entitle him to relief. Fourth, Applicant's Motion makes no mention of the Order being void. Finally, Applicant makes no allegation that supports relief under Rule 60(b)(5), SCRPC. Rule 60(b) does not provide a mechanism to set aside a *criminal* conviction because it is a rule of *civil* procedure. Therefore, Rule 60(b) is not the proper vehicle to challenge the validity of Applicant's conviction.

Regardless, Applicant cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All of Applicant's allegations either have been or could have been addressed in his prior PCR action challenging his guilty plea. See Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). Since in his PCR action, Applicant failed to raise the argument that plea counsel should have argued or advised him that his charges could have constituted a spree, the Court did not address the issue in its order, and Applicant cannot now raise the issue as a ground for relief. See id. (holding *res judicata* also bars any issues that could have been raised in the former action).

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M. H. P. E. ACLEY

60(b)(3)

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This Court finds that Applicant has failed to present any evidence proving the facts essential to entitle him to relief. See Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Accordingly, the Court finds Applicant has not shown a sufficient reason why his conviction should be reversed or otherwise vacated, or that it is no longer equitable to enforce his guilty plea.

This Court also finds that Applicant's motion must be denied because of Applicant's failure to timely file his motion. South Carolina Rules of Civil Procedure Rule 60(b)(5) states: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." The order upon which the current motion is made was executed on January 16, 2013, and filed January 18, 2013. Applicant was served with the order on January 22, 2013. Applicant made his motion under Rule 60(b), SCRPC, on February 26, 2016—well beyond one year after the judgment dismissing his application for post-conviction relief had been entered. Therefore, this Court finds that Applicant's motion was not filed within a reasonable time as mandated by Rule 60(b), SCRPC, nor was it filed within one year of the judgment being entered and therefore is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his motion. Therefore, Applicant's Motion for Relief from Judgment pursuant to Rule 60(b) is hereby **DENIED**.

The Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203,

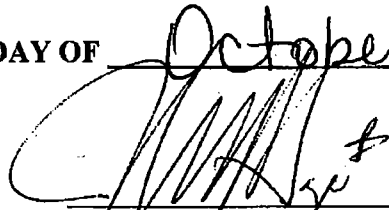
60(b)
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(b)(3)

CLERK OF COURT
PARTIAL DAY
2016 OCT 31 PM 1:24
M. HOPE BLACKLEY

SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 31 DAY OF October, 2016.



J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2016 OCT 31 PM 1:21
M. HOPE BLACKLEY

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M. Hope Blackley
Clerk of Court

December 13, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Jeffrey Eugene Peter
Applicant # 131471

CASE # 2011-CP-42-1947

VS
State
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order
In this action dated 12-12-10 on 12-13-10

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Thomas
Alicia Oliver
Jonathan Bonds

12-13-10
(Date)

Corie Steg
(Signature)

Emily Jeter 131476
P.O. Box 124
130 Oaklawn Road
Delzer S.C. 29649

RECEIVED

JAN 09 2017

T.C.I. MAILROOM

SCDC

JAN 15 2017

COMMISSARY

South Carolina Supreme Court
Daniel Ohtalouse, Clerk
Post Office Box 11330
Columbia S.C. 29211

IMS