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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 26 2017

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Brooks P. Goldsmith, Thirteenth Circuit Court Judge

Case No.: 2016-CP-23-04114

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APR 27 2017

The State,

Respondent

S.C. SUPREME COURT

v.

Mark Anthony Martucci,

Appellant

NOTICE OF APPEAL

Counsel for Respondent:

Honorable Alan Wilson
J. Benjamin Aplin
PO Box 11549
Columbia, SC 29211

Counsel for Appellant:

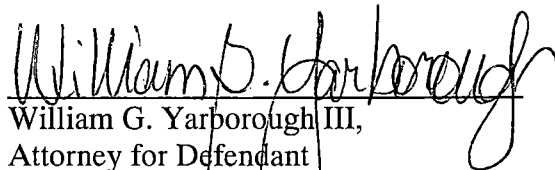
William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601

Julie A. Coleman
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Defendant Mark Anthony Martucci, appeals his Order of Dismissal. The defendant filed an application for post-conviction relief on July 1, 2016, and Respondent made its Return and Motion to Dismiss on October 20, 2016. A hearing was held before the Honorable Brooks P. Goldsmith on February 23, 2017. This appeal is taken from the order of the Honorable Brooks P. Goldsmith filed April 12, 2017, which denied Defendant's Post Conviction Relief application and dismissed with prejudice.

The issues for appeal are whether the post-conviction relief petition should have been granted due to newly discovered evidence.

Respectfully submitted,



William G. Yarborough III,
Attorney for Defendant
522 N Church Street
Greenville, SC 29601
Telephone (864) 331-1612
Fax (864) 370-0022

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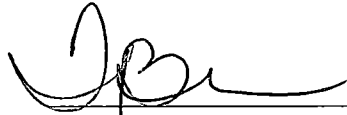
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AFFIDAVIT OF SERVICE

I, Traci Trouton-Burr, certify on this date, April 18, 2017 I served a Notice of Appeal in this action, dated April 18, 2017 on the Honorable Alan Wilson, Benjamin Aplin, and Assistant Attorney General Julie A. Coleman by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

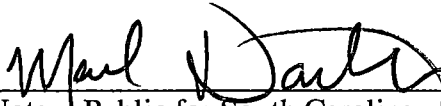
Honorable Alan Wilson
Benjamin Aplin
Julie A. Coleman
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211

Respectfully submitted,



Traci Trouton-Burr
Paralegal to William G. Yarborough, Esquire

SWORN TO before this 18
Day of April, 2017


Notary Public for South Carolina
My Commission expires: 10/9/23

6

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
)
 Mark Martucci, #314148,)
)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 2016-CP-23-4114
 ORDER OF DISMISSAL

APR 12 PM 2:35
 CLERK OF COURT
 1000 B. WILSON CENTER
 GREENVILLE, SC

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 APR 26 2017
 SC Court of Appeals

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 1, 2016. Respondent made its Return and Motion to Dismiss on October 20, 2016, requesting the application be summarily dismissed based upon (1) the expiration of the statute of limitations; (2) the presumption against successive PCR applications; and (3) the failure to make a prima facie showing that the “newly discovered evidence” entitled him to relief.

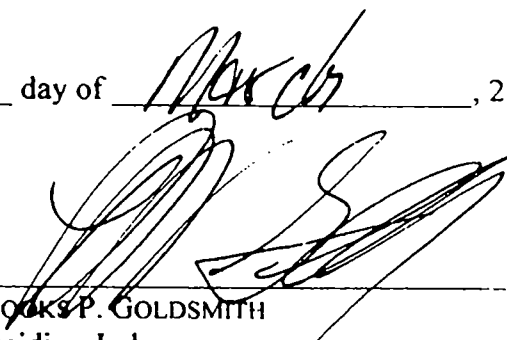
A hearing over the State's Motion to Dismiss was held on February 23, 2017. Applicant was present and represented by William G. Yarborough, III, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman. Following the hearing, the record was left open to allow Applicant to submit an additional brief in support of his application. Applicant filed his “Memorandum in Opposition to Motion to Dismiss” on March 9, 2017. Respondent did not respond, but rested on the arguments presented at the hearing.

This Court finds that Applicant has failed to meet his burden in proving that he is entitled to a full hearing on the merits of his application for post-conviction relief. This Court finds this

application is untimely and successive, and Applicant has failed to make a prima facie showing of "newly discovered evidence." Therefore, Respondent's Motion to Dismiss is granted, and this this application is summarily dismissed with prejudice.

IT IS THEREFORE ORDERED that the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 26 day of March, 2017.



BROOKS P. GOLDSMITH
Presiding Judge
Thirteenth Judicial Circuit

2, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2016CP2304114

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC

2017 APR 12 PM 2:35

Mark Anthony Martucci vs. South Carolina State Or

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. Nonsuit): 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: _____

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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Brooks P Goldsmith

This judgment was entered on the . and a copy mailed first class this . to attorneys of record or to parties (when appearing pro se) as follows:

William G. Yarborough III 522 North Church Street
Greenville, SC 29601

Jalie A. Coleman, PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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