

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APR 28 2017

CERTIORARI TO SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes II, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2017-000076

Jeffrey E. Jeter, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Did the circuit court abuse its discretion in denying Petitioner's motion for relief from judgment pursuant to Rule 60(b)(3) where the motion was untimely and without merit?

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner 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 – 3<sup>rd</sup> or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Petitioner pleaded guilty as indicted. The Honorable Roger L. Couch sentenced him 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 Petitioner to ten years for the four remaining forgery charges, to be served consecutively to the other sentences and Petitioner's probation revocation, for an aggregate sentence of forty years. Petitioner 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.

Petitioner then filed an Application for Post-Conviction Relief (PCR) on May 2, 2011. Respondent made its Return on May 2, 2012. In his Application, Petitioner 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 given 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.

An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse before the Honorable J. Mark Hayes, II. Petitioner 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, Judge Hayes denied and dismissed Petitioner's PCR application by written order filed January 18, 2013.

Petitioner 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.

Petitioner then filed a Motion for Relief from Judgment pursuant to Rule 60(b) on February 22, 2016, and June 14, 2016. Respondent submitted its Return on September 1, 2016, arguing the motion must be dismissed as untimely and without merit. Petitioner filed two documents, on October 11, 2016, and October 13, 2016, respectively, in opposition to the proposed order of dismissal. On October 31, 2016, the Honorable J. Mark Hayes, II, issued an order denying and dismissing the motion. Petitioner then filed a "Motion to Alter/Amend and

Reconsider Judgment Pursuant to: Rules 52(b); 59(e), [SCRCP]” on November 29, 2016. Respondent made its Return on December 7, 2016. On December 12, 2016, Judge Hayes issued an Order denying Petitioner’s Motion to alter, amend, or reconsider the order denying his Rule 60(b), SCRCP motion. Petitioner then filed a Notice of Appeal and Petition for Writ of Certiorari appealing the circuit court’s denial of his 60(b) motion.

## STANDARD OF REVIEW

Whether to grant or deny a motion under SCRCP 60(b) is within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992) (citing Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 399 S.E.2d 779, 782 (1990)). The trial judge's ruling on such a motion will not be disturbed absent an abuse of discretion. Tri-County Ice & Fuel Co., 303 S.C. at 242, 399 S.E.2d at 782 (citing Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988)). "An abuse of discretion arises where the [decision] was controlled by an error of law or . . . is based on factual conclusions that are without evidentiary support." Id.

## ARGUMENT

### **I. This Court should deny review because the circuit court did not abuse its discretion in denying Petitioner's 60(b) Motion as untimely and without merit.**

Petitioner argues the circuit court erred in denying his Rule 60(b)(3), SCRCP, motion because he “provided sufficient evidence of ‘fraud and misrepresentation’ to the court by the solicitor when the solicitor misled the court[.]” This Court should deny review because this issue is not preserved and the circuit court did not abuse its discretion in denying the motion.

#### *A. Petitioner's argument is not preserved for review*

This issue was not raised in Petitioner's 60(b) motion, but rather, was raised for the first time in his 59(e), SCRCP, motion, and therefore is not preserved. See Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’”(quoting Budinich v. Becton Dickinson & Co., 486 U.S. 196, 200 (1988))). Accordingly, this Court should deny review.

#### *B. The circuit court properly denied the motion as untimely*

Petitioner's motion was properly denied due to his 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.” Though Petitioner's 60(b) motion was unclear as to which specific subsection he was seeking relief under, Petitioner specifically asserts in his Petition for Writ of Certiorari that the court “erred in denying [his] Rule 60(B)(3), SCRCP, motion.” (Petr. PWC p. ii). Rule 60(b) contains an explicit time limit for filing a motion pursuant to subsection (b)(3): *one year* after judgment. Rule 60(b)(3), SCRCP. Pursuant to the time limits

prescribed in Rule 60(b), the circuit court found that Petitioner's motion, which was filed February 22, 2016, was untimely because it challenged the PCR judge's order of dismissal which was issued on January 18, 2013, and served on Petitioner January 22, 2013—approximately three years earlier. Therefore, the circuit court did not abuse its discretion in dismissing the motion as untimely. Accordingly, this Court should deny review.

*C. The circuit court properly denied the motion as meritless*

Rule 60(b)(3), SCRCF, provides that a Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(5), SCRCF, 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), SCRCF, 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), SCRCF, 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). Further, Rule 60(b), SCRCF, 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 Petitioner's conviction.

In his 60(b) motion, Petitioner alleged the following: (1) his plea counsel prevented him from fully and fairly presenting his case; (2) an offer was made to him on October 8, 2009, that his plea counsel did not inform him of; (3) plea counsel had a conflict of interest and that he failed to argue or advise him that the charges constituted a spree, and (4) his sentence was unconstitutionally enhanced. With respect to the enhancement, Petitioner specifically argued his

prior forgery conviction was more than ten years old, and he was never informed that the offenses were charged as third or subsequent offense, or that he could receive consecutive sentences on the charges. He also argued he received no benefit from pleading guilty and that he could have received less time if he had gone to trial.

The circuit court properly found that Petitioner's claims set forth no specific allegations sufficient to entitle him to relief. He set forth no allegations of any mistake, inadvertence, surprise, or excusable neglect, no allegations of any "newly discovered" evidence, no specific allegations of fraud, misrepresentation, or other misconduct, no allegation that the order was void, and lastly, no allegation that supported relief under subsection (b)(5), SCRCP.

The circuit court also found that Petitioner cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All allegations Petitioner raised in his 60(b) motion either have been or could have been addressed in his prior PCR action challenging his guilty plea. All arguments Petitioner raised in his 60(b) motion, with the exception that the charges constituted a spree, had already been raised to and ruled upon by the PCR judge in Petitioner's previous PCR action. 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). Therefore, the circuit court did not abuse its discretion in finding that Petitioner's allegations were without merit and procedurally barred pursuant to the doctrine of *res judicata*. See id. (holding *res judicata* also bars any issues that could have been raised in the former action).

Accordingly, the circuit court did not abuse its discretion in finding that Petitioner failed to present any evidence proving the facts essential to entitle him to relief under Rule 60(b). See Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991).

**CONCLUSION**

For the foregoing reasons, this Court should deny the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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By:   
ATTORNEYS FOR RESPONDENT

April 28, 2017

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Certiorari to Spartanburg County  
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RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

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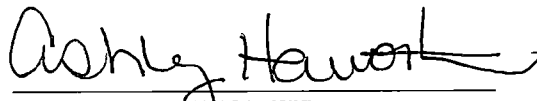
**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies of the Return in the United States mail, postage prepaid:

**Jeffrey Eugene Jeter, #131471  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669**

This 28<sup>th</sup> day of April, 2017.

  
ASHLEY HAWORTH  
PARALEGAL