

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 02 2017

POST CONVICTION RELIEF APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Derham Cole, Circuit Court Judge

PCR Case Number: 2015-CP-42-04889

Gary Lamont Petty, Applicant

v.

The State of South Carolina, Respondent.

NOTICE OF APPEAL

Counsel of Record:

Alan Wilson, South Carolina Attorney General

Benjamin Aplin, Senior Assistant Deputy Attorney General

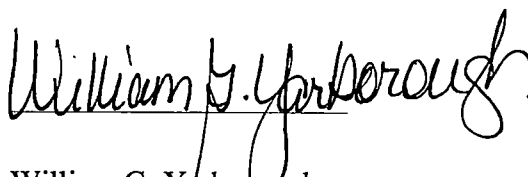
Valerie Garcia Giovanoli, Assistant Attorney General
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

Applicant Gary Lamont Petty appeals the decision of the Seventh Judicial Circuit's Court of Common Pleas, taken from the attached Order (*See Order*) and respectfully requests that this Honorable Court allow him the opportunity to file an appeal.

Applicant's counsel has requested a copy of the transcript from the Court Reporter and is currently awaiting the delivery. A copy of this Notice has been served upon Attorney General Alan Wilson, Senior Assistant Deputy Attorney General Benjamin Aplin, and Assistant Attorney General Valerie Garcia Giovanoli by U.S. Mail.

THEREFORE, the Applicant, Gary Lamont Petty, respectfully moves this Honorable Court to grant the appeal.

Respectfully submitted,

A handwritten signature in black ink that reads "William G. Yarborough". The signature is written in a cursive style with a large, prominent initial "W".

William G. Yarborough
Attorney for the Applicant
522 North Church Street
Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
May 30, 2017

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AFFIDAVIT OF SERVICE

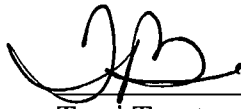
I, Traci Trouton-Burr, certify on this date, May 30, 2017 I served a Notice of Appeal in this action, dated May 30, 2017 on Alan Wilson, Benjamin Aplin, and Valerie Giovanoli by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Alan Wilson, South Carolina Attorney General

Benjamin Aplin, Senior Assistant Deputy Attorney General

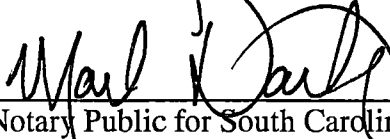
Valerie Garcia Giovanoli, Assistant Attorney General
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

Respectfully submitted,



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

SWORN TO before this 30
Day of May, 2017



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

Greenville, SC
May 30, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Gary Lamont Petty,)
S.C.D.C. No. 264235,)
Applicant,)
v.)
State of South Carolina)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-42-04889

CONDITIONAL ORDER OF DISMISSAL

2017 APR -3 P11 4: 16
M. HOPE BRADLEY

This matter comes before the Court by way of an] application for post-conviction relief (“PCR”) filed by Gary Lamont Petty (“Applicant”) on November 24, 2015. Respondent made its Return, requesting the Application be summarily dismissed.

PROCEDURAL HISTORY

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 April 1999 term of the Spartanburg County Grand Jury for grand larceny, greater than \$1,000 but less than \$5,000 (1999-GS-42-02357), criminal sexual conduct, first degree (1999-GS-42-02358), and burglary, first degree (1999-GS-42-02359). Michael Morin, Esquire, represented Applicant. Applicant proceeded to trial before the Honorable Lee S. Alford and a jury. The jury found Applicant guilty as indicted. On February 9, 2000, Judge Alford sentenced Applicant to imprisonment for concurrent terms of five years for grand larceny, 30 years for criminal sexual conduct, and life imprisonment for burglary.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Katherine Link, Esquire. By Opinion decided May 21, 2002, the South Carolina Court of Appeals affirmed

Applicant's convictions. State v. Petty, Op. No. 2002-UP-359 (S.C. Ct. App. May 21, 2002).

The Remittitur was issued on June 6, 2002.

First PCR Application: 2003-CP-42-1781

Applicant filed his first application for post-conviction relief on May 19, 2003 (2003-CP-42-01781). He alleged the following grounds for relief in his application:

1. Ineffective assistance of counsel;
2. Lack of subject-matter jurisdiction

Respondent made its return on March 12, 2004. Applicant amended his application by filing on January 4, 2005, which substituted the following grounds for relief:

1. Ineffective Assistance of Counsel; in that:

- a. "Defendant's trial counsel failed to fully investigate the facts and circumstances surrounding the Defendant's charges and failed to properly prepare for trial."
- b. "Defendant's trial counsel failed to adequately object to the admission of the State's DNA evidence on the grounds that the State had failed to fully and accurately disclose the documentation related to the DNA evidence during discovery."
- c. "Defendant's trial counsel failed to consult with an expert witness, before or during the trial, regarding the State's DNA and trial counsel failed to call an expert witness at trial to rebut the claims of the State's expert witness regarding the DNA evidence presented at trial."
- d. "Defendant's trial counsel failed to object to premature jury instructions given by the court during the State's case in chief."
- e. "Defendant's trial counsel failed to challenge the admissibility at trial of Defendant's prior statements given to law enforcement officials."
- f. "Defendant's trial counsel failed to disclose a potential conflict of interest involving one of the State's witnesses."
- g. "Defendant's trial counsel failed to object to improper comments by the Solicitor during the State's closing argument."

Applicant again amended his application by filing on February 2, 2005, which substituted the following grounds for relief:

1. Ineffective Assistance of Counsel; in that:

- a. "Defendant's trial counsel failed to fully investigate the facts and circumstances surrounding the Defendant's charges and failed to properly prepare for trial."
 - b. "Defendant's trial counsel failed to adequately object to the admission of the State's DNA evidence on the grounds that the State had failed to fully and accurately disclose the documentation related to the DNA evidence during discovery."
 - c. "Defendant's trial counsel failed to challenge the admissibility of Nancy Skraba as an expert witness at the trial of the case."
 - d. "Defendant's trial counsel failed to consult with an expert witness, before or during the trial, regarding the State's DNA and trial counsel failed to call an expert witness at trial to rebut the claims of the State's expert witness regarding the DNA evidence presented at trial."
 - e. "Defendant's trial counsel failed to object to premature jury instructions given by the court during the State's case in chief."
 - f. "Defendant's trial counsel failed to challenge the admissibility at trial of Defendant's prior statements given to law enforcement officials."
 - g. "Defendant's trial counsel failed to disclose a potential conflict of interest involving one of the State's witnesses."
 - h. "Defendant's trial counsel failed to object to improper comments by the Solicitor during the State's opening and closing arguments."
 - i. "Defendant's trial counsel failed to conduct an adequate cross-examination of the alleged victim at the trial of the case."
 - j. "Defendant's trial counsel failed to object to improper hearsay testimony during the State's case in chief and failed to request curative measures after the improper testimony was presented to the jury."
 - k. "Defendant's trial counsel's closing argument fell below the required standard because if [sic] failed to adequately address the elements which the State was required to prove and the lack of evidence presented on those elements."
 - l. "Defendant's trial counsel failed to move to quash Defendant's indictment for First Degree Burglary on the grounds that it lacked any specific references to aggravating circumstances."
 - m. "Defendant's trial counsel failed to adequately challenge the admission of Defendant's prior record at the trial of the case."
 - n. "Defendant's trial counsel failed to challenge the court's erroneous jury charge on the issue of 'reasonable doubt'."
2. Lack of Subject-Matter Jurisdiction; in that:
- a. "Defendant's indictment for First Degree Burglary was insufficient because it lacked specific references to any aggravating circumstances."

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An evidentiary hearing into the matter was convened on April 7, 2005, before the Honorable John M. Milling. Applicant was present at the hearing and represented by David M. Collins, Jr., Esquire. Molly R. Crum, of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and Michael Morin, Esquire, also testified. By written Order dated June 10, 2005, and filed June 16, 2005, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, filed a Petition for Writ of Certiorari pursuant to Johnson v. State¹ on Applicant's behalf. Thereafter, the South Carolina Supreme Court filed an Order dated August 22, 2006, transferring jurisdiction over the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied Applicant's petition by unpublished opinion. Petty v. State, S.C. Ct. App. Order filed Sept. 28, 2007. The Remittitur was issued to the circuit court on October 16, 2007.

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First Petition for Habeas Corpus: 0:08-2967-RBH-PJG

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on August 21, 2008 (C.A. No. 0:08-2967-RBH-PJG). In his Petition, Applicant set forth the following grounds for relief:

1. "Ineffective assistan[ce] of trial counsel for failing to move to suppress statements, fruit of poisonous tree, and all evidence."
 - a. "Warrantless arrest without probable cause, circumstances surrounding illegal search and seizure, no intervening circumstance to purge taint of illegal arrest."
2. "Trial counsel ineffective for failure to subpoena expert"
 - a. "The court allowed counsel an hour to contact alleged DNA expert and counsel neglected opportunity. Only line of defense to prove petitioner's innocence."
3. "Prosecutor misconduct (inadmissible DNA evidence)"

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)

- a. "Prosecutor presentment of false statements and evidence withheld documentation[] and notice of intent to use expert."
4. "Ineffective assistance of trial counsel for failing to quash burglary first indictment."
 - a. "There['s only nurse testimony of physical injury, no direct or circumstantial evidence proving alleged person who committed crime cause[d] injury."
5. "False corroborating (extrinsic and intrinsic) evidence to fortify statements, presented by prosecutor and state expert"
 - a. "DNA evidence presented to corroborate statement was false. NO evidence found at scene, vagina swabs did not match petitioner."
6. "Search warrant, unconstitutional"
 - a. "Lie in search warrant affidavit and search warrant unconstitutional without probable cause."
7. "Jury selection process done by Judge, where jurors form not attached to transcript"
 - a. "There was no objection to selection process by defense or state. Certain jurors were asked had they been victim of burglary, housebreaking or assault or if they had family in law enforcement, and the majority were victims. There was no preemptory [sic] strikes and a juror was excused for knowledge of a state witness, jury consist of 7."
8. "Violation of petitioner['s 5[th] amendment"
 - a. "Initial encounter of petitioner and officials overborne petitioner['s will. Petitioner convicted upon 'self' incriminating statements."

Respondent filed its Return and Motion for Summary Judgment on November 26, 2008. On August 17, 2009, the Honorable Paige J. Gossett, United States Magistrate Judge, issued a Report and Recommendation that Respondent's motion for summary judgment be granted. Petty v. Padula, 0:08-2967-RBH-PJG, 2009 WL 303127 (D.S.C. 2009) (as incorporated in District Court Order). The Honorable R. Bryan Harwell, United States District Judge, accepted the Report and Recommendation for summary judgment and denied Applicant's petition on September 21, 2009. Id. Applicant gave timely notice of his appeal to the U.S. Fourth Circuit Court of Appeals. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on March 4, 2010 for want of a certificate of appealability. Petty v. Padula, 368 Fed.Appx. 404 (4th Cir. 2010).

Second PCR Application: 2009-CP-42-4363

Applicant filed his second application for post-conviction relief on August 7, 2009 (2009-CP-42-04363). He alleged the following grounds for relief in his application:

1. "Insufficiency of evidence – pre-interrogation waiver is specific;"
2. "Statutory and Constitutional 4th Amendment violation – 17-13-140 violation, no probable cause illegal body intrusion;"
3. "Prosecutor(s) Corpus Delicti Rule Violation – no corroborating evidence;"
4. Ineffective Assistance of Counsel, in that;
 - a. "Counsel failed to make adequate objections,"
 - b. "Counsel failed to make motion to obtain DNA expert for the defense."

Respondent made its return and motion to dismiss on May 13, 2010, arguing the application was successive and untimely. On August 5, 2010, the Honorable J. Derham Cole issued a Conditional Order of Dismissal, and then a Final Order on February 3, 2011 dismissing the matter with prejudice.

Third PCR Application: 2011-CP-42-0251

Applicant filed his third application for post-conviction relief on January 21, 2011 (2011-CP-42-00251). He alleged the following grounds for relief in his application:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel failed to object to there being no jury selection process, which led to Applicant's cousin being seated on the jury,
 - b. Counsel failed to object to improper comment of prosecutor and request directed verdict,
2. Denial of fair trial, in that;
 - a. Applicant's 5th Amendment rights were violated due to his being compelled to provide DNA evidence against himself without due process, following a coerced statement and incarceration,
3. State's failure to prove their case;
 - a. State failed to prove by direct or circumstantial evidence that the Applicant caused physical injury to the victim or participated in the crime.

Respondent made its return and motion to dismiss on January 10, 2012, arguing the application failed to meet the requirements of newly discovered evidence, was successive, untimely, and barred by *res judicata*. On March 7, 2012, the Honorable J. Derham Cole issued a Conditional

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Order of Dismissal, and then a Final Order on January 18, 2013 dismissing the matter with prejudice.

Applicant filed a timely notice of appeal. The Supreme Court of South Carolina dismissed Applicant's appeal on February 21, 2013 for failure to show an arguable basis for appeal. The Remittitur was issued to the circuit court on March 11, 2013.

Fourth PCR Application: 2013-CP-42-2165

Applicant filed his fourth application for post-conviction relief on May 7, 2013 (2013-CP-42-02165). He alleged the following grounds for relief in his application:

1. "Ineffective assistance of appellate (PCR) counsel," in that
a. "Failure to protect my rights pursuant to Coe Ann. 17-27-100, right to seek appellate review of denial of original PCR application (1781)".
Applicant then filed a motion captioned "Amendment to Post-Conviction Relief Application" where he alleged the following grounds for relief:

2. "Ineffective assistance of appellate (PCR) counsel," in that
a. "Appellate counsel Wanda H. Carter failed to follow procedures set forth in Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) in not briefing one arguable legal issue which arose during the post-conviction relief procedure."
b. "Instead, she presented issue of ineffective assistance of trial counsel because he lacked sufficient time to prepare petitioners case prior to plea proceeding (see enclosed Johnson petition)."
c. "This was error because had she reviewed the record she would have known Applicant had a trial and that this issue was not raised and ruled upon during post-conviction relief process, [preserving] it for appellate review. However, the Court of Appeals erroneously relieved counsel and made ruling on issue they had not jurisdiction, in violation of state laws, 17-27-80. Due to the Court of Appeals and appellate counsels illegality, Applicant has been denied appeal within the fully adjudication on the merits of his original PCR (order), dismissing application."

Respondent made its return and motion to dismiss on February 20, 2014, arguing the application was successive and untimely. On March 12, 2014, the Honorable J. Derham Cole issued a

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Conditional Order of Dismissal. The Honorable J. Mark Hayes, II issued a Final Order on February 1, 2016 dismissing the matter with prejudice.

Second Petition for Habeas Corpus: 0:15-4192-RBH-PJG

Applicant, by and through retained counsel William G. Yarborough, III, Esquire, subsequently filed a second Petition for Habeas Corpus under 28 U.S.C. § 2254 on October 29, 2015 (C.A. No. 0:15-4192-RBH-PJG). In his Petition, Applicant set forth the following grounds for relief:

1. Newly-Discovered Evidence, in that;

- a. “[T]he DNA analysis used to convict Applicant was based on faulty and risk-prone procedures, the results of which are questionable at best and inconsistent with normal expectations of DNA analysis, as well as concluding that the results’ corresponding statistical findings were greatly mistaken and exaggerated.”

On October 29, 2015, the Honorable Paige J. Gossett, United States Magistrate Judge, issued a Report and Recommendation that the Petition be dismissed without requiring Respondent to file a return. Applicant, by and through counsel, thereafter filed on November 2, 2015, a “Motion to Withdraw Petition for Writ of Habeas Corpus and Stay Timely Filing Limit” (emphasis original), seeking time to properly file a motion seeking authorization for a successive application. On November 3, 2015, the Honorable R. Bryan Harwell, United States District Judge, granted Applicant’s motion to withdraw, but denied Applicant’s motion to stay time limits, citing the Court’s lack of jurisdiction.

28 U.S.C. § 2244 Motion: No. 15-349

On November 5, 2015, Applicant, by and through retained counsel William G. Yarborough, III, Esquire, filed a motion pursuant to 28 U.S.C. § 2244 in the Fourth Circuit Court of Appeals, seeking authorization for district court consideration of a successive application. The Court denied that motion by Order filed November 18, 2015.

Current PCR Application

In his *fifth and current* post-conviction relief application, Applicant, by and through retained counsel William G. Yarborough, III, Esquire, alleges he is being held unlawfully for the following reasons:

1. Newly-Discovered Evidence, in that;
 - a. “[T]he DNA analysis used to convict Applicant was based on faulty and risk-prone procedures, the results of which are questionable at best and inconsistent with normal expectations of DNA analysis, as well as concluding that the results’ corresponding statistical findings were greatly mistaken and exaggerated.”
 - b. “[A] new trial is warranted for new testing of the DNA based on recent technological and scientific innovations, and in light of the faulty testing originally used and their erroneous results.”

Attached to and incorporated herein are the Spartanburg County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s prior PCR records, DNA results for Applicant’s PCR DNA application and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Section §17-27-45(A) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the charges he challenges in this application on February 9, 2000. The Remittitur was returned June 6, 2002. Therefore, Applicant was required to file this PCR application no later than June 6, 2003. This application was filed on November 24, 2015, which was *over 12 years beyond* the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Court shall summarily dismiss the application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successiveness

This Court finds it must also summarily dismiss the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

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Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been raised previously. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, the court shall summarily dismiss the application because it is successive.

Failure to State a Claim

This Court finds this PCR application must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to 160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

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6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's sole allegation is that he should be entitled to new testing of DNA evidence based on recent scientific advancements and late expert review of the DNA procedure followed at the time of his conviction. An Applicant that asserts he is innocent may apply for forensic testing of his DNA and any physical evidence or biological material related to his conviction pursuant to the Access to Justice Post-Conviction DNA Testing Act. S.C. Code Ann. § 17-28-10 to -120. To apply for post-conviction forensic DNA testing, Applicant must submit his request on the forms prescribed by the Supreme Court of South Carolina,² filed under the original indictment number, and in the court of general sessions in which the conviction took place. S.C. Code Ann. §§ 17-28-40, -90. Any exculpatory results of a new DNA test may serve as grounds for filing a motion for a new trial pursuant to the South Carolina Rules of Criminal Procedure. S.C. Code Ann. § 17-28-100. Therefore, requests for post-conviction forensic DNA testing must be pursued under the DNA Testing Act and are not sufficient to support an action under the Post-Conviction Procedure Act. As Applicant's allegations exclusively regard post-conviction forensic DNA testing, the application must be dismissed pursuant to Rule 12(b)(6), SCRCPP.

Moot Issue

This Court also finds this PCR application must be dismissed as moot. The public record indicates that by consent Order filed September 9, 2016, Applicant and the State have already agreed to post-conviction forensic DNA testing consistent with the DNA Testing Act. See S.C. Code Ann. 17-28-110(A). As such, it appears that Applicant's complaint has been resolved by means independent of the present action. "A case becomes moot when judgment, if rendered,

² The appropriate form is SCCA DNA 101, entitled "Application for Forensic DNA Testing."

will have no practical legal effect upon existing controversy.” Mathis v. S. Carolina State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). As Applicant’s complaint has been otherwise resolved through the appropriate process, there is no longer an “existing controversy.” Thus, this matter must be summarily dismissed.

CONCLUSION

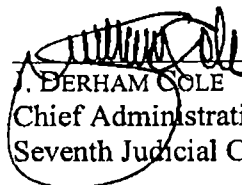
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Valerie Garcia Giovanoli
Johnny E. James, Jr., Esquire
Post-Conviction Relief Division
P.O. Box 11549
Columbia, SC 29211

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J. HOEFLI, CLERK

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 30 day of March, 2017.


J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina

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
April 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Corey Lambert Healy
2015CP42-4885

CASE # *2015CP42-4885*

Applicant

CERTIFICATE OF SERVICE

vs
Stall
Respondent

I certify that, on this date, I served a copy of the *Judicial Ct. Dismissal*
In this action dated *3-30 2017* on *4-4-17*

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:

- Ordey Harrold*
- Alaina Alvie*
- William Harbo*

4-4-17
(Date)

[Signature]
(Signature)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Gary Lamont Petty,)
 S.C.D.C. No. 264235,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-42-4889

FINAL ORDER OF DISMISSAL

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 M. HOPE ELACKIN

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed November 24, 2015. Respondent made its return on or about March 24, 2017, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and for failure to state a cognizable claim for relief.

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 March 30, 2017 and filed April 3, 2017, provisionally denying and dismissing this action, while giving Applicant 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 a Certificate of Service from the Spartanburg County Clerk’s Office, dated April 4, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant’s counsel of record William Yarborough.


To date, Applicant has failed to respond to either Respondent’s motion to dismiss or this

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Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 19 day of July, 2017.



J. DERHAM CODE
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

_____, South Carolina.

2017 MAY 19 PM 4:21
M. HOPE BLACKLEY

Spartanburg County

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

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M. Hope Blackley
Clerk of Court

May 22, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Coury Lamont Petty
261885

Applicant

CASE # *20150022-4889*

VS

CERTIFICATE OF SERVICE

Stee
Respondent

I certify that, on this date, I served a copy of the *Final Order Dismissed*
In this action dated *5-19* *2017* on *5-22-17*

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:

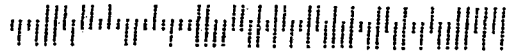
Adrienne Hancock

Alvin Dlee

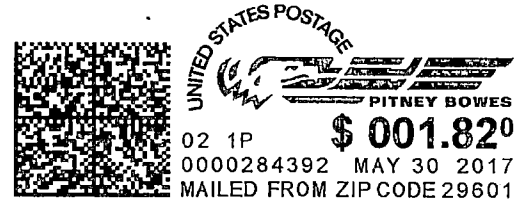
William Yorkborough III

5-22-17
(Date)

[Signature]
(Signature)



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



Mr. Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC, 29211