

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Presiding  
Judge, Ninth Judicial Circuit

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Case No. 2010-CP-10-1709

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LARRY G. HARVIN,  
Prisoner I.D. No.: 253468,

Petitioner,

V.

STATE OF SOUTH CAROLINA,

Respondent.

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NOTICE OF APPEAL

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•NOTICE IS HEREBY GIVEN that the above-captioned Petitioner seeks Appellate Review of the May 16, 2017 'Order Denying Applicant's Motion To Alter or Amend' rendered by the Honorable R. Markley Dennis, Jr., on the specific points noted within the conjoined 'Written Explanation Of Improper PCR Determination'.

15/ L. G. Harvin

Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M.C.I. F.3-170.A  
386 Redemption Way  
McCormick, SC 29899

6 - 12 - 17  
DATE

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Presiding  
Judge, Ninth Judicial Circuit

Case No. 2010-CP-10-1709

RECEIVED

JUN 15 2017

S.C. SUPREME COURT

LARRY G. HARVIN,  
PRISONER I.D. No.: 253468,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE

I, Larry G. Harvin, do declare in the presence of the below-  
signed Notary Public on below-noted date, that I did deposit an  
Original Draft of my 'Notice of Appeal', accompanied by a  
Written Explanation of Improper PCR Determination' and a  
copy of the May 16, 2017 'Order Denying Applicant's Motion To  
Alter or Amend' rendered by the Honorable R. Markley Dennis,  
Jr., into the custody of the M<sup>2</sup>C.I. Mail Room Clerk (below-  
signed Notary Public), for said materials to be immediately  
forwarded by sufficient U.S. Postage for the purpose of Filing  
and Service upon: 'Clerk, S.C. Supreme Court'; 'Clerk,  
Charleston County Court of Common Pleas'; 'The Honorable  
R. Markley Dennis, Jr., Ninth Judicial Circuit Presiding  
Judge'; 'Ms. Alicia A. Olive, Esq., Ass't. Atty. Gen., S.C.'

Sworn and Subscribed  
to before me this  
12<sup>th</sup> day of June, 2017

Michael Cornick  
Notary Public, South Carolina

L. Harvin  
Mr. Larry G. Harvin  
PRISONER I.D. No.: 253468  
M<sup>2</sup>C.I. F.3-170.A  
386 Redemption Way  
M<sup>2</sup>Cornick, SC 29899

\* My Commission Expires: July - 09 - 2025

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Presiding  
Judge, Ninth Judicial Circuit

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Case No. 2010-CP-10-1709

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LARRY G. HARVIN,  
Prisoner I.D. No.: 253468,

Petitioner,

V.

STATE OF SOUTH CAROLINA,

Respondent,

---

WRITTEN EXPLANATION OF IMPROPER  
PCR DETERMINATION.

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The above-captioned Petitioner ('Harvin') asserts that the May 16, 2017 Order of Judge Dennis is an 'Improper Determination' where

- 1) - There is no factual premises (evidence) entered into the lower court record to refute Harvin's document-supported claims of 'After-Discovered Evidence' in the initial PCR Application, which Harvin consistently pointed out in his lower court filings; this Court Reversed and Remanded for the exact same reason in McCoy v. State of South Carolina, 401 S.C. 363, 369, 737 S.E. 2d 623, 626 (S.C. 2013) ("where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.").

2- With the great passage of time between the year 2010 and 2017, the requirements of SCRCP 59(g) should've been relaxed, especially considering that Judge Dennis had Harvin's Motion under SCRCP 59(e) before him on May 9, 2017, and could've set an Evidentiary Hearing in accords with McCoy and S.C. Code Ann. § 17-27-70(b).

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CONCLUSION

WHEREFORE, based upon the foregoing, Harvin's position with the instant Petition for a Writ of Certiorari is to have Judge Dennis' May 16, 2017 Order Reversed and Remanded for the Circuit Court to entertain his 2010 PCR action on its merits, in accords with McCoy.

Respectfully Submitted,

1s/ L. Harvin  
Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M.C.I. F.3-170-A  
386 Redemption Way  
McCormick, SC 29899

6 - 12 - 17  
DATE

CC  
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AT

STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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Larry G. Harvin, #253468 )  
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Applicant, )  
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v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2010-CP-10-1709

**ORDER DENYING APPLICANT'S  
MOTION TO ALTER OR AMEND**

FILED  
JULIE S. HARRIS  
CLERK OF COURTS  
MAY 16 PM 3:15

This matter comes before the Court by way of an Application for post-conviction relief filed March 3, 2010. Respondent made its Return on June 24, 2010. This Court issued a Conditional Order of Dismissal dated June 28, 2010, and filed July 6, 2010, provisionally denying and dismissing this action. This Court gave Applicant twenty days from the date of service in which to show why the dismissal should not become final. Applicant submitted a document titled "Memorandum Supporting Motion in Opposition to Conditional Order of Dismissal," dated July 26, 2010. After reviewing the response in conjunction with the original pleadings, the Court issued a final order dismissing Applicant's PCR application dated November 3, 2010, and filed November 12, 2010. Thereafter, Applicant filed a document captioned "Notice and Motion for Hearing of Applicant's Motion to Alter or Amend 'PCR' Court's Final Order," dated November 22, 2010, and filed on November 24, 2010. Respondent received this document on November 30, 2010. Respondent made its Return to the motion on May 4, 2017.<sup>1</sup>

<sup>1</sup> Respondent informs this Court it closed its file in this case on December 13, 2010. On December 12, 2016, Respondent received a letter dated December 5, 2016, from Applicant indicating there was an outstanding motion to reconsider before this Court. In order to be able to respond, Respondent ordered its closed file from records, which it received on March 20, 2017.

This Court finds Applicant's Motion to Alter or Amend must be dismissed due to Applicant's failure to comply with the procedures and time limits set forth in Rule 59 of the South Carolina Rules of Civil Procedure. Applicant failed to provide this Court with a copy of his motion as required by Rule 59 (g) of the South Carolina Rules of Civil Procedure, which provides: "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." In addition, the motion is to be served within ten days of receipt of written notice of the entry of the order. Rule 59(e), SCRPC. Applicant indicates in his motion that he received the written order on November 16, 2010. The document provided to Respondent contained no certificate of service, and Respondent did not receive the document until November 30, 2010, which was more than ten days after Applicant received written notice of the Final Order.<sup>2</sup> See Rule 6, SCRPC.

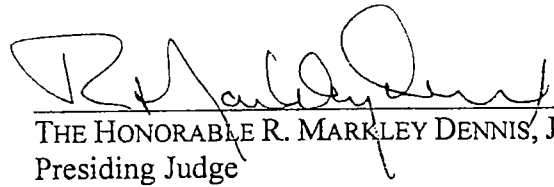
In addition, this Court has reviewed the record in this case, including the submissions of the parties, and has discovered no findings of fact or conclusions of law that have been either overlooked or misapprehended, and this Court is not persuaded to alter or amend its judgment. Further, pursuant to Rule 59(f), SCRPC, this Court further finds oral argument would not aid in the reconsideration of the original judgment. This Court's Final Order contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §§ 17-27-70(c) and -80 and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Therefore, Applicant's Motion to Alter or Amend must is denied and dismissed.

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<sup>2</sup> This Court takes judicial notice that November 16, 2010, fell on a Tuesday.

IT IS THEREFORE ORDERED that Applicant's motion is hereby DENIED AND DISMISSED.

AND IT IS SO ORDERED this 14 day of July, 2017.

  
THE HONORABLE R. MARKLEY DENNIS, JR.  
Presiding Judge  
Ninth Judicial Circuit

11 10 2017, South Carolina

cc  
AT  
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STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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Larry G. Harvin, #253468, )  
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Applicant, )  
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- v. )  
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State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2010-CP-10-1709

**FINAL ORDER**

FILED  
2010 NOV 12 AM 10:24  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter comes before the Court pursuant to an application for post-conviction relief filed March 3, 2010. The State made its Return and Motion to Dismiss on June 24, 2010, requesting that the application be summarily denied and dismissed.

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 dated June 28, 2010 and filed July 6, 2010, provisionally denying and dismissing this action. This Court gave Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached herewith is Affidavit of Personal Service, dated July 28, 2010, serving the Order on the Applicant.

In a document captioned "Memorandum Supporting Motion in Opposition to Conditional Order of Dismissal," which was unfiled and dated July 26, 2010, Applicant alleged the following reasons that he is entitled to an evidentiary hearing:

1. Applicant's PCR application contains attachments standing as prima facie evidence to support an "after-discovered evidence" showing.
2. The law governing the "successive-writ" doctrine permits "after-discovered evidence" collateral actions on above facts.

*RMO/1*

This Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that the allegations are not sufficient to warrant a hearing. This application is Applicant's second PCR application. This Court finds that Applicant has not presented a sufficient reason for filing a successive and untimely application. Applicant raised or could have raised these issues in his prior application.

The Applicant alleges that after-discovered evidence exists in that he was in jail in North Carolina just days prior to the incident. An applicant requesting a new trial based on after-discovered evidence must show that the evidence:

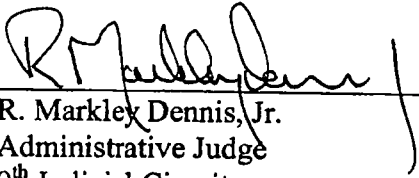
(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Moreover, Applicant could have brought this issue to the attention of his trial counsel and prior PCR counsel. This Court finds that Applicant has failed to establish a claim for after-discovered evidence.

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

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3rd day of November, 2010.

  
\_\_\_\_\_  
R. Markley Dennis, Jr.  
Administrative Judge  
9<sup>th</sup> Judicial Circuit

Moncks Corner, South Carolina.

CC,  
AT  
AG

STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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Larry G. Harvin, #253468, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS

2010-CP-10-1709

**CONDITIONAL ORDER  
OF DISMISSAL**

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 JUL -6 AM 11:32

FILED

This matter comes before this Court by way of an application for post-conviction relief filed March 3, 2010. The Respondent made its Return and Motion to Dismiss on June 24, 2010, requesting that the application be summarily denied and dismissed.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the July 1997 term of the Charleston County Grand Jury for murder (97-GS-10-4288), armed robbery (97-GS-10-4290), and possession of a firearm during commission of a violent crime (97-GS-10-4289). Ashley Pennington, Esquire, represented the Applicant. On October 12-16, 1998, the Applicant proceeded to trial, after which the jury found him guilty as indicted. The Honorable Daniel F. Pieper sentenced him to confinement for life for murder and thirty (30) years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Office of Appellate Defense represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Harvin, Op. No. 25297 (S.C. Ct. App. filed May 29, 2001). The Remittitur was issued on June 22, 2001.

emo9/11

The Applicant subsequently filed his first application for post-conviction relief on August 9, 2001, in which he raised the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Court did not have jurisdiction.
4. Prosecutorial misconduct.

An evidentiary hearing was convened on September 10, 2002. By Order dated October 21, 2002, the Honorable A. Victor Rawl denied and dismissed the application with prejudice. The Applicant submitted a motion to alter or amend pursuant to Rule 59(e), SCRPC. Judge Rawl denied the 59(e) motion by Order dated May 23, 2003.

Applicant submitted a federal habeas corpus petition dated February 26, 2003. The State made its Return and Memorandum of Law in Support of Motion for Summary Judgment on May 21, 2003. By Report and Recommendation dated October 6, 2003, the Honorable Joseph R. McCrorey, U.S. Magistrate Judge, recommended that the State's motion for summary judgment be granted. By Order dated January 15, 2004, the Honorable G. Ross Anderson, Jr., U.S. District Judge, granted the State's motion for summary judgment.

Before this Court are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the trial transcript, the Final Brief of Appellant, the Final of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated June 22, 2001, the prior PCR application and Return thereto, Judge Rawl's Order of Dismissal, Applicant's federal habeas petition, the State's Return thereto, Judge McCrorey's Report and Recommendation, Judge Anderson's Order dismissing the federal habeas petition, the current application, and the State's Return and Motion to Dismiss thereto.

In his second and current application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel for failing to adequately prepare for defending against the State's charges by investigating into possible alibi evidence.

First, this Court finds that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act provides that:

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, 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.

S.C. Code Ann. § 17-27-90 (2003). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

This Court finds that Applicant has failed to establish sufficient reason why he could not have raised his current allegation in his prior application; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. This Court summarily dismisses the current application as successive.

This Court finds that this application should also 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. S.C. Code Ann. §17-27-45(a) reads as follows:

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 upon an appeal, whichever is later.

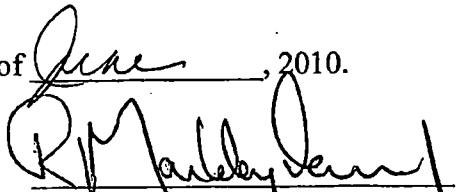
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Remittitur from the direct appeal was issued on June 22, 2001. The Applicant was therefore required to file his application before June 22, 2002. This application was filed on March 3, 2010, which was nearly eight (8) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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, this Court summarily dismisses the application for failure to file within the time mandated by the Post Conviction Procedure Act.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The 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 by filing any reasons he may have with the Clerk of Court for Charleston County, South Carolina. Applicant must also serve a copy of his response to opposing counsel Matthew J. Friedman of the Attorney General's Office at P.O. Box 11549, Columbia, SC 29211.

rmq/4

AND IT IS SO ORDERED this 29<sup>th</sup> day of June, 2010.

  
R. Markley Dennis, Jr.  
Administrative Judge  
9<sup>th</sup> Judicial Circuit

Moncks Corner, South Carolina.

rmj/5



HENRY McMASTER  
ATTORNEY GENERAL

June 24, 2010

The Honorable R. Markley Dennis Jr.  
P O Box 1800  
300 B California Avenue  
Moncks Corner, SC 29461-1800

**Re: Larry G. Harvin, 253468 v. The State of South Carolina  
2010-CP-10-1709**

Dear Judge Dennis:

Enclosed please find a proposed Conditional Order of Dismissal in the above-referenced case for your approval and signature.

If this Order meets with your approval, please sign and forward it to the Berkeley County Clerk of Court for filing. Thank you for your time and consideration in this matter.

Sincerely,

Matthew J. Friedman  
Assistant Attorney General

MJF/maf  
Enclosure(s)

cc: Larry G. Harvin, 253468

Mr. Harry G. Harvin  
Prisoner I.D. No.: 253468  
M.C.I. F.3-170-A

McCormick Correctional Institute  
386 Redemption Way  
McCormick, SC 29899

Att:.

Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

LEGAL  
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**RECEIVED**

JUN 12 2017

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MCCORMICK CORRECTIONAL INST.  
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