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August 18, 2017

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Casey Bernard Stuckey v. State of South Carolina, Case No. 2016-CP-43-1660

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) This appeal is being filed with the Supreme Court because this is an appeal from the denial of post-conviction relief.

I have not been retained to represent Mr. Stuckey on for his appeal but I am filing this to preserve his appellate rights.

Sincerely,

Eleanor Duffy Cleary
Bar #7068
ellen@clearylawnllc.com
Attorney for Appellant

cc:
Julie A. Coleman
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

RECEIVED

AUG 18 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2016-CP-43-1660

Casey Bernard Stuckey,
#297810

Respondent,

v.

State of South Carolina

Appellant.

NOTICE OF APPEAL

Casey Bernard Stuckey appeals the order of the Honorable R. Ferrell Cothran dismissing his application for post-conviction relief dated July 14, 2017. Appellant received written notice of entry of this order on July 22, 2017.

Pursuant to Rule 243(c), SCACR, appellant provides the following explanation as to why the lower court's determination that the post-conviction relief action is barred as successive or being untimely under the statute of limitations was improper.

Appellant raised sufficient after-discovered evidence within one year of its discovery that (1) would probably change the result if a new trial were granted; (2) has been discovered since trial; (3) could not have in the exercise of due diligence been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. S.C. Code Ann. § 17-27-45 (c) (Supp. 2016); *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999); *Hayden v. State*, 178 S.C. 610, 611, 299 S.E.2d 854, 855 (1983); *State v. Caskey*, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979); *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

RECEIVED

AUG 18 2017

S.C. SUPREME COURT

Eleanor A Cleary

Eleanor Duffy Cleary
Bar #7068
Cleary Law LLC
Post Office Box 40086
Columbia, South Carolina 29240
(803) 376-0075
ellen@clearylalwllc.com
Attorney for Appellant

Other Counsel of Record:
Julie A. Coleman
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 18 2017

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2016-CP-43-1660

Casey Bernard Stuckey,
#297810

Respondent,

v.

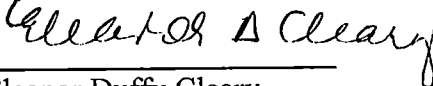
State of South Carolina

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2017 addressed to Assistant Attorney General, attorney of record, Julie A. Coleman, Post Office Box 11549, Columbia, South Carolina 29211.

August 18, 2017



Eleanor Duffy Cleary
Bar #7068
Cleary Law LLC
Post Office Box 40086
Columbia, South Carolina 29240
(803) 376-0075
ellen@clearylalwllc.com



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

AUG 18 2017

S.C. SUPREME COURT

July 21, 2017

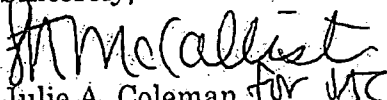
The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin St.
Sumter, SC 29150-4974

Re: Casey B. Stuckey v. State of South Carolina
2016-CP-43-1660

Dear Mr. Campbell:

Enclosed please find an original and a copy of a Final Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,


Julie A. Coleman *for WTC*
Assistant Attorney General

JAC:cey
Enclosures

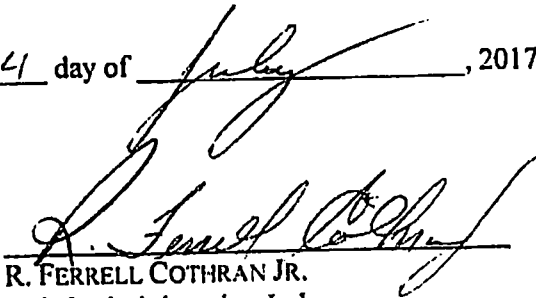
cc: Eleanor Duffy Cleary, Esquire

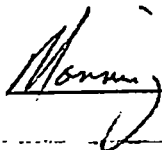
This Court finds Applicant has failed to show he should be entitled to a hearing on his untimely PCR application. Accordingly, this Court finds that Applicant has failed to provide sufficient reason why the Conditional Order of Dismissal should not become final.

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.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

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


R. FERRELL COTHRAN JR.
Chief Administrative Judge
Third Judicial Circuit

, South Carolina.

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Eleanor Duffy Cleary 1116 Blanding Street Suite 2B
Columbia, SC 29201

Alan McCrory Wilson PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2017 JUN -5 PM 2:15

JAMES C. CAMPBELL
Casey Bernard Stuckey, #00197805, COURT Case No.: 2016-CP-43-1660
SUMTER COUNTY, S.C.)

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Casey Bernard Stuckey (Applicant) on September 08, 2016. 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 Sumter County Clerk of Court. Applicant was indicted at the April 2001 term of the Sumter County Grand Jury for assault and battery with intent to kill (ABWIK), possession of a weapon during a violent crime, lynching-2nd degree, kidnapping, accessory before fact, and accessory after fact (2001-GS-43-283). Applicant was represented by Lauren Ferrari, Esquire. W. Harry Conner Jr., Esquire, prosecuted the case. On November 10-12, 2003, Applicant proceeded to trial and was found guilty of lynching - 2nd degree and kidnapping. Applicant was found not guilty of the other offenses for which he was charged. The Honorable Thomas W. Cooper, Jr. sentenced Applicant to imprisonment for a period of twenty (20) years for lynching-2nd degree and life imprisonment without parole for kidnapping. The sentences were to run concurrent. Applicant appealed his convictions.

RJC

A timely Notice of Appeal was filed on Applicant's behalf and an Anders¹ appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant. On March 1, 2005, the South Carolina Court of Appeals dismissed the appeal. State v. Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005). The Remittitur was filed on April 13, 2005.

2005-CP-43-432


In his first application for post-conviction relief on April 15, 2005, Applicant alleged that he was being held in custody unlawfully on the following grounds:

1. Ineffective assistance of trial counsel.
 - a. Indictment presented day of trial.
 - b. For not asking squash indictment or for not asking for [continuance]. This fell under reasonable standard it didn't allow attorney to prepare defense. Also, this violated 14th amendment due process of law. Also, sixth amendment effective assistance of counsel.
 - c. Failure to investigate a valid alibi.
2. Prosecutor Misconduct.
 - a. Prosecutor failed to send material to attorney.

Applicant subsequently filed an amendment to his application on January 12, 2006.

Applicant alleged that;

1. "A plea of not guilty was unlawfully induced due the trial court's lack of subject matter jurisdiction; more specifically that the indictment charges failed to allege the essential elements of the crime allegedly committed by the Defendant."
2. Ineffective assistance of counsel :
 - a. "Appellate counsel was ineffective."
 - b. "Trial counsel rendered ineffective assistance of counsel by not ascertaining that there were proper investigatory techniques."
 - c. "Trial counsel rendered ineffective assistance of counsel by failure to investigate a valid alibi."
 - d. "Trial counsel rendered ineffective assistance of counsel by not asking the court to dismiss the indictment nor did the counsel ask for a continuance."

 ¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

- e. "Trial counsel rendered ineffective assistance of counsel by failing to consult with him before the trial about other charges that were brought forth that he had no knowledge of."
 - f. "Counsel did not formulate any objections nor did the Counsel allow him to defend himself on the stand."
 - g. "Trial counsel rendered ineffective assistance of counsel for lack of information pertaining to his case."
 - h. "Trial counsel did not represent him to the fullest or the best of the trial counsel ability."
3. "Applicant alleges that he had an alibi during the time the crime was committed. No one could place the Applicant at the crime but the victim. However, victim's story was very confusing. The Applicant did not know the victim and had never seen the victim before."
 4. "Had Applicant been given the opportunity to voice his concerns in regards to the kidnapping and lynching charge, he would not have been convicted or would have received a lesser sentence."

Respondent filed its Return on October 4, 2005. An evidentiary hearing into the matter was convened on April 7, 2006, at the Sumter County Courthouse. Applicant was present in court and represented by Charles T. Brooks III, Esquire. Respondent was represented by Teri Hutson Salane, Esquire, of the South Carolina Attorney General's Office. On May 22, 2006, the Honorable Howard P. King, denied and dismissed the application with prejudice.

On March 27, 2007, Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense filed a Johnson Petition for Writ of Certiorari in the Supreme Court of South Carolina. By written order dated January 10, 2008, the petition was denied and counsel's request to withdraw was granted.

C/A No. 0:09-203-HFF-PJ

On January 25, 2009, Applicant filed a pro se Petition for Writ of Habeas corpus under 28 U.S.C. § 2254. Applicant set forth the following grounds for relief (verbatim):

1. Trial Court erred in refusing to grant a directed verdict to second degree lynching.
 - a. A violation of fourteenth amendment due process. I was found not guilty for the principle charge, and found guilty of second degree lynching. It was not enough evidence to prove guilt

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beyond a reasonable doubt dealing with the existence of the offense.

2. Ineffective assistance of counsel.
 - a. For not asking to squash indictment for not asking to/for contin[uance]. Fell under reasonable standard violated 14th Amendment Due Process & Six Amendment effective of assistance of counsel. Failure to investigate a valid alibi. Prosecutor misconduct failure to send material to trial attorney.
3. Prosecutor failed to send material to attorney.
 - a. Trial transcript. Trial counsel stated that she was never served with discovery package. (Page 238 & 239) line 25-12. How could we prepare fully. PCR Hearing Transcript she fully does not know for sure (pg. 32 line 24). She states I believe I prepared this before our meeting. (pg. 331-77) violation of 6th Amend.
4. Trial Counsel erred in misunderstanding petitioner's position on the states plea offer in the case.
 - a. The counsel failed to clarify up until the day of trial if I wanted to accept plea offer. App. pg. 301 lines 2-4 and App. 282 line 7-p. 282 line 11. Violation of sixth and fourteenth amendment writ of certiorari.

On February 8, 2010, the Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted. By written order on March 19, 2010, the Honorable Henry F. Floyd, United States Magistrate Judge, granted Respondent's motion for summary judgement.

CURRENT APPLICATION

In his second and current application for post-conviction relief and the supporting memorandum attached thereto, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Newly Discovered Evidence.
 - a. Victim has recanted.

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Also, before this Court are the records of the Aiken County Clerk of Court, Applicants records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief action, Applicant's appeal records, Applicant's records from the federal habeas corpus action, and the records from this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Offense Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense 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). 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) 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."

Applicant was sentenced on November 10, 2003. The Remittitur from Applicant's direct appeal was issued on April 13, 2005. The current application was not filed until September 8, 2016, well beyond the statutory filing period. Therefore, the Court must dismiss the application

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as barred by the statute of limitations.

Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 offense 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.

Under this statute, successive post-offense relief applications are forbidden unless an applicant can indicate 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 the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-offense relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-offense relief. Therefore, he has failed to meet the burden imposed upon him, and the Court must summarily dismiss the application as successive to Applicant's previous PCR application.

Newly discovered evidence

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction 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.

RJC/
Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In support of his claim of newly discovered evidence, Applicant has offered affidavits from Kenya Stuckey (Applicant's brother), Leroy Dixon, Glenn Washington, Chamere Currie, and Donnell Robinson (victim). Applicant cannot satisfy all of the elemental requirements for newly discovered evidence such that he should be entitled to a new trial. Specifically, the evidence offered by Applicant in support of his claim, could have been discovered before trial with the exercise of due diligence. Applicant's brother, Kenya Stuckey and Glen Washington, both signed affidavits stating that the Applicant was with them on the day that the victim was shot, and therefore could not have been involved in the shooting. Mr. Stuckey alleges in his statement that he "was never interviewed or questioned" about the incident. The facts alleged by both Mr. Stuckey and Mr. Washington pertaining to the Applicant's whereabouts on the night of the incident, could have with due diligence been discovered before trial by merely investigating and locating witnesses.

Furthermore, Applicant cannot satisfy the requirement that the evidence "is not impeaching or cumulative." The "well-established general rule is that newly discovered evidence which "merely impeaches or contradicts the testimony of a witness at the trial" affords no sufficient grounds for a new trial." State v. Strickland, 201 S.C. 170, 22 S.E.2d 417, 418 (1942) (citing, State v. Pittman, 137 S.C. 75, 134 S.E. 514, 518 (1926)). Donnell Robinson testified under oath at trial that Applicant was the person who shot him. The affidavit allegedly written by Mr. Robinson directly impeaches his prior testimony. Mr. Robinson's written statement recanting the testimony he offered at trial is unreliable and incredible. The South Carolina Supreme Court has previously held that; "recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new

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trial.” State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (citing, State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)).

Finally, even assuming arguendo that Applicant can successfully meet all five factors of the Hayden test, the application is barred under S.C. Code Ann. §17-27-45(C). Mr. Robinson’s affidavit recanting his testimony was written and notarized on November 20, 2012. However, Applicant did not file this PCR action until September 6, 2016, nearly five years later.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

{Conclusion and signature on the following page.}

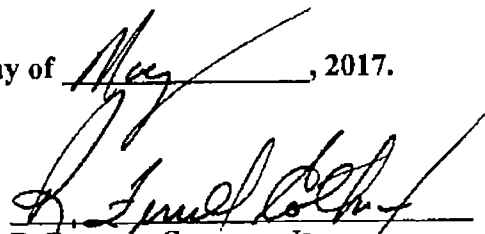
CONCLUSION

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 Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Julie A. Coleman, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 3rd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Aiken 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 24 day of May, 2017.



R. FERRELL COTHRAN JR.
Chief Administrative Judge
Third Judicial Circuit


_____, South Carolina



RECORDED
2017 JUN -5 PM 2:14
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

May 31, 2017

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin St.
Sumter, SC 29150-4974

Re: Casey B. Stuckey v. State of South Carolina
2016-CP-43-1660

Dear Mr. Campbell:

Enclosed please find an original and a copy of a Conditional Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:cey
Enclosures

cc: Eleanor Duffy Cleary, Esquire