

The state of South Carolina
In the Supreme court

RECEIVED

Appeal From Cherokee County SEP 01 2017
Court of Common Pleas

S.C. SUPREME COURT

J. Derham Cole, Circuit Court Judge

Case No, 2016 CP.1100606

Labrontae Agnew # 334342 ----- Appellant

VS

State of South Carolina ----- Respondent

Notice of Appeal

The Appellant, Labrontae 334342, takes this appeal from the case captioned above. The order in this case was entered on August 15, 2017. Notice of Entry of this order was received on Aug 21, 2017.

Aug 29 2017

S/ Labrontae Agnew

Labrontae Agnew 334342
386 redemption way
McCormick 8629899

The state of South Carolina
in the Supreme Court

Appeal from Cherokee County
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016CP1100606

Labrontae Agnew # 384342 --- Appellant

VS
State of South Carolina --- Respondent

Affidavit of Service

The undersigned pro, se petitioner Labrontae Agnew does hereby certify that (s) he has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail with sufficient postage affixed thereto and return address clearly marked on the date indicated below.

Parties served:

Pleading: (notice of appeal)

this 29 day of Aug 2017

RECEIVED

SEP 01 2017

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

S.C. SUPREME COURT

S/ Labrontae Agnew
386 Redemption Way
McCormick SC 29899

The State of South Carolina
In The Supreme Court

Appeal from Cherokee County
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case NO. 2016 CP1100606

Labrontae Agnew #334342 --- Appellant
VS
State of South Carolina --- Respondent

Affidavit of Service

The undersigned pro, se petitioner
Labrontae Agnew does hereby certify that (s)
he has served below listed parties with a
copy of the pleading (s) indicated below by mailing
a copy of same to them in the United States
mail with sufficient postage affixed thereto
and return address clearly marked on the date
indicated below.

Parties served:
Pleading: (Notice of Appeal)
this 29 day of Aug 2017

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

S/ Labrontae Agnew
386 Redemption Way
McCormick SC, 29899

Labrontae Agnew 334342
386 Redemption way
McCormick 8929899

Date: Aug 29 2017

2016 EP. 1100606

Dear Honorable Daniel E Shearouse
Enclosed please find a true copy of
Notice of Appeal, And Affidavit of Service.

Respectfully submitted
S/ Labrontae Agnew

CC: Lia

CC: O.S.S

Labontae Agnew #33434
McCormick Correctional
386 Redemption way
McCormick SC, 29899

The Supreme Court
Daniel E Shearouse
PO Box 11330
Columbia SC 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Labrontae Agnew, #334342,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0606

CONDITIONAL ORDER OF DISMISSAL

FILED IN THE OFFICE
 CLERK OF COURT
 017 MAY 24 A 10:5
 CHIEF CLERK
 CHEROKEE COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Labrontae Agnew (Applicant) on August 26, 2016 and amended on November 23, 2016 and on March 20, 2017. 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 Cherokee County Clerk of Court. Applicant was indicted at the May 2008 term of the Cherokee County Grand Jury for assault and battery of a high and aggravated nature (2008-GS-11-0424), armed robbery (2008-GS-11-0425), burglary, first degree, dwelling (2008-GS-11-0426), burglary, second degree (2008-GS-11-0427), grand larceny (2008-GS-11-0428), and kidnapping (2008-GS-11-0429). Scott D. Robinson, Esquire, represented the Applicant. Barry Barnette, Esquire, the Spartanburg County Solicitor, prosecuted the case. On April 16, 2009, Applicant pled guilty to all offenses as indicted. The Honorable J. Mark Hayes, II concurrently sentenced him to confinement for concurrent periods of thirty (30) years each for kidnapping, armed robbery, and burglary, first degree; fifteen (15) years for burglary, second degree; and ten (10) years

each for assault and battery of a high and aggravated nature (ABHAN); and ten (10) years for grand larceny more than \$500, which is to run consecutive to the ten year ABHAN sentence. Applicant was given nine (9) months credit for time served. The Applicant did not appeal his convictions or sentences.

2009-CP-11-1099

Applicant filed his first post-conviction relief application filed on November 12, 2009. An amended application was filed on August 13, 2010. Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Due process violation.

Respondent made its Return on or about March 25, 2010. An evidentiary hearing into the matter was convened on April 8, 2011, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by John R. Holland, Esquire. Respondent was represented by Suzanne H. White, Esquire, of the South Carolina Attorney General's Office. By written order filed July 29, 2011, the Honorable J. Derham Cole dismissed the application.

A timely notice of appeal was filed by Kenneth Shabel, Esquire. On February 21, 2012, a Petition for Writ of Certiorari was filed on Applicant's behalf by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense. Respondent made its return on July 5, 2012. By written order filed on June 20, 2013, the Supreme Court of South Carolina denied the petition. The Remittitur was issued on July 8, 2013.

C/A No.: 0:13-cv-2402-MGL-PJG

On September 4, 2013 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:

1. Denial of Effective Assistance of Counsel : Counsel failed to conduct a reasonable investigation on the facts of the case; Counsel failed to request the Court that the jury impose sentence; Counsel failed to advise Petitioner of *Blackley v. Washington*; Counsel failed to inform Petitioner of his Right to waive Blackley Rights; Counsel failed to make an argument of insufficient proof of forced entry; Counsel failed to inform Petitioner of Plea Process; Counsel failed to inform Petitioner of the elements of the charge of Grand Larceny and Armed Robbery; Counsel failed to object to the Warrants issued; Counsel failed to file Motion to Dismiss on the charge of Burglary in the first Degree; Counsel failed to establish the time-line of events to support the charge of Burglary in the Second Degree; and Counsel failed to file Motion for a Psychological Evaluation.

Respondent filed its Return and Motion for Summary Judgment on March 4, 2014. Applicant failed to respond to Respondent's motion. On May 15, 2014, the Honorable Paige J. Gossett, United States District Judge, issued the recommendation that Applicant's petition be dismissed for lack of prosecution and that any pending motions be terminated. Applicant filed his response to Respondent's return on October 30, 2014. On December 10, 2014, Judge Gossett issued the Report and Recommendation that Respondent's motion for summary judgement be granted and Applicant's petition be denied. *Agnew v. McCall*, 0:13-2402-MGL-PJG.

C/A No.:0:16-399-MGL

On February 8, 2016, Applicant filed a second *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Applicant set forth the following grounds for relief (verbatim):

1. My Indictments are null and void, further unenforceable: On May 8, 2008 I was indicted for several offenses concerning indictment numbers: 2008-GS-11-(424), (425), (426),(427),(428), and (429). However, according to State law, Cherokee County does not have a General Sessions term of Court that covered the week of May 8, 2008. Therefore, each of my indictments are void and unenforceable due to the fact that the Court did not have authority of law or jurisdiction to convene a grand jury for [any] criminal matter, at that particular time."

On April 6, 2016, the Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendation recommending that the Applicant's petition be dismissed with prejudice

without requiring Respondent to file a return. On May 2, 2016, by written order the Honorable Mary G. Lewis, United States District Judge, issued the order adopting the Magistrate Judge's report dismissing Applicant's petition without prejudice and without requiring Respondent to file a return.

CURRENT APPLICATION

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

1. Newly Discovered Evidence
 - a. "Applicant was seventeen (17) years old at the time [of] crime and was a juvenile."
 - b. "Applicant discovered newly discovered evidence by review [of] his co-defendant'[s] PCR transcript pursuant to McCoy v. State. Newly discovery evidence in co-defendant PCR transcript by co-defendant John Bonner, hearing on 11-9-2016."
2. Ineffective Assistance of Counsel
3. "Direct Appeal Lacked Jurisdiction"
4. Subject matter jurisdiction
 1. "Applicant alleged that at the age [of] 17 when this crime was committed on April 2, 2008, he was a juvenile and the trial court did not have jurisdiction or authority to try the Applicant as an adult in the court of general sessions as an adult [where] by the trial court lost jurisdiction over the case and is a violation of my due process right of the 14th amendment which applicant should have tried as juvenile in the family court and the Applicant guilty plea is unconstitution[al] right in violation of my due process of law."
5. Federal and State Constitution violation.
 - a. "Sentencing statute constitutes cruel and unusual punishment in violation of the state and federal constitutions when applied to all juveniles prosecuted as adults because the mandatory sentence failed to permit the court to consider any circumstances based on his attributes of his conduct in mitigation of punishment. Site at Supreme Court of Iowa, Iowa Appellee v. Andre Jerome Lyle Jr. Appellant No.11-1339 decided July 18, 2014."

Also before this Court are Spartanburg County Clerk of Court records, Applicant's records

from the South Carolina Department of Corrections, Applicant's prior post-conviction relief action records, Applicant's appeal records, and Applicant's federal habeas corpus actions, and the records for this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

Respondent submits that this application should 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. 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 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). 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 pled guilty to the offense he now challenges on April 16, 2009. This application was filed on August 26, 2016, well beyond the statutory filing period. Therefore, the application must be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

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 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.

Under this statute, successive post-conviction 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-conviction 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-conviction 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 vacation of his sentence or resentenced as a juvenile, 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).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

"(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions."

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

In support of his claims Applicant references that he discovered new evidence by reviewing his co-defendant's PCR transcript. However, Applicant fails to establish what he actually discovered in his review that would constitute "newly discovered evidence". Applicant also alleges as grounds for relief that he (Applicant) was a seventeen year old juvenile at the time of the crime. Applicant's age at the time the crimes were committed maybe newly *remembered* by the applicant, but is not newly discovered evidence. Therefore, Applicant has failed to establish the elements required to show that he is entitled to a new trial based on newly discovered evidence. 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 a *prima facie* showing. Therefore, this matter must be summarily dismissed with prejudice.

Subject matter jurisdiction

Applicant also alleges that the circuit court lacked subject matter jurisdiction because he was a juvenile at the time the offenses were committed. "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Evans v. State, 363 S.C. 495, 507, 611 S.E.2d 510, 517 (2005). In criminal cases, "the trial court acquires subject matter jurisdiction by way of way of a valid indictment." Id. The indictment is a notice document that is required by our state constitution and statutes. Id. Applicant's indictments are facially valid and proper, therefore, establishing the subject matter jurisdiction of the circuit court to hear Applicant's criminal case.

Furthermore, Applicant's contention that the circuit lacked jurisdiction because he was seventeen at the time he committed the offenses, is without merit. S.C. Code Ann. §16-19-20 states that;

"Child" or "juvenile" means a person less than seventeen years of age.
"Child" or "juvenile" does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.

Applicant was charged with both Class A and Class C felonies which removed him from the ability to be defined as a "child" or "juvenile" under the statute. Therefore, there is no basis for Applicant's claim that the trial court lacked subject matter jurisdiction, and the application must be dismissed as a matter of law.

[Conclusion and signature on the following page]

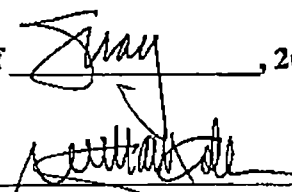
CONCLUSION

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

Office of the Attorney General
Attn: Valerie Giovanoli, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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 19 day of May, 2017.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-11-606

Labrontae Agnew, #334342

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

FILED IN THE OFFICE
 CLERK OF COURT
 CHEROKEE COUNTY
 MAY 24 2017
 P 1:03

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/J. Derham Cole
 Circuit Court Judge

2053
 Judge Code

05/24/2017
 Date



After 5 Days Return To:
Mrs. Brandy W. McBee
Clerk of Court, Cherokee County
Post Office Drawer 2289
Gaffney, SC 29342

FILED IN THE OFFICE
CLERK OF COURT

2017 MAY 24 P 4: 09

BRANDY W. MCBEE
CHEROKEE COUNTY, SC

neopost[®]
05/24/2017

US POSTAGE

FIRST-CLASS MAIL

\$00.67⁰



ZIP 29340
041L11245001

Labrontae Agnew, #334342
McCormick C.I.
386 Redemption Way
McCormick, SC 29899

16-600

FILED IN THE OFFICE
CLERK OF COURT

2017 MAY 24 P 4: 09

LINDY W. MCGEE
CHEROKEE COUNTY, SC

neopost

05/24/2017

US POSTAGE

FIRST-CLASS MAIL

\$02.66⁰



ZIP 29340
041L11245001



After 5 Days Return To:
Mrs. Brandy W. McBee
Clerk Of Court, Cherokee County
Post Office Drawer 2289
Gaffney, S.C. 29342

Office of Attorney General
P. O. Box 11549
Columbia, SC 29211

Attention: Ashley Haworth

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
)
 Labrontae Agnew, #334342,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0606

FINAL ORDER OF DISMISSAL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2017 AUG 18 A 11:20 AM
 BRANDY W. MCBEE

This matter comes before the Court by way of an application for post-conviction relief filed August 26, 2016, and amended on November 23, 2016 and on March 20, 2017. Respondent made its Return on or about May 19, 2017, requesting that the application be summarily dismissed as untimely, successive, for failing to make a prima facie case of newly discovered evidence, and lack of a basis for the claim that the circuit court lacked subject matter jurisdiction.

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 May 19, 2017 and filed May 24, 2017, provisionally denying and dismissing this action, while giving the Applicant twenty (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 an Affidavit of Service dated June 8, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Response of Objection to Conditional Order of Dismissal" on June 7, 2017, in which Applicant argues "PCR court abused its discretion in granted review newly discovered evidence in memorandum of law in support of post-conviction

relief whereby Respondents shown bad faith to response to ground (1).” Applicant further argues that, “Applicant discovery newly discovered evidence and state failure recover evidence of 22-caliber bullet in the exterior wall of bedroom on the end wall, and newly discovered evidence that state failure to provide a copy of ballistic report evidence” and Officer Jamison “located a box of 22-caliber rounds in the yard of Robert Wilson Jr.’s residence.” Applicant argues that this was in violation of his 5th Amendment Brady rights.

This Court notes an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

“(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Here, the evidence Applicant refers to as “newly-discovered” with exercise of reasonable diligence could have been discovered prior to the entry of his plea. Furthermore, the evidence is not of such a weight and quality that interest of justice require Applicant’s guilty plea to be vacated.

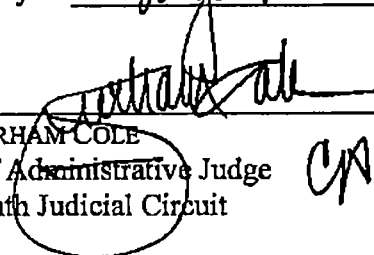
In his response, Applicant also reasserts his arguments of; newly discovered evidence that he was seventeen at the time of the crime and was a juvenile, counsel was ineffective for failure to challenge Applicant’s conviction or sentences or to file a direct appeal, lack of subject-matter jurisdiction, and federal and state constitution violation. This Court notes these allegations were addressed in the Conditional Order of Dismissal.

This Court has reviewed Applicant's response to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and 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**.

This Court hereby advises the 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 15 day of August, 2017.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit *CP*

_____, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP1100606

Labrontae Agnew #334342

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY
 S.C.
 2017 AUG 18 P 2:20
 BRANDY W. MCBEHE

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ J. Derham Cole
 Circuit Court Judge

2053
 Judge Code

8/18/2017
 Date

For Clerk of Court Office Use Only

This judgment was entered on August 18, 2017 and a copy mailed first class or placed in the appropriate attorney's box on August 18, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Labrontae Agnew #334342
McCormick Corr Inst.
386 Redemption Way
McCormick, SC 29899

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

Court Reporter

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), SCRCP.

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.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2017 AUG 18 P 12: 201
BRANDY W. MCBEE



ALAN WILSON
ATTORNEY GENERAL

July 19, 2017

The Honorable J. Derham Cole
P O Box 1744
180 Magnolia Street, 2nd Floor
Spartanburg, SC 29304-1744

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2017 AUG 18 : A 11: 201
BRANDY W. MCBEE


Re: Labrontae Agnew #334342 v. State of South Carolina
2016-CP-11-0606

Dear Judge Cole:

Enclosed please find the original proposed Final Order of Dismissal in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the Cherokee Clerk's office in the enclosed addressed envelope and have them serve the orders on all parties. If you have any questions, please feel free to contact me.

Sincerely,

for 
Rasheeda Cleveland
Staff Attorney

RC/jaj
Enclosure(s)

cc: Labrontae Agnew, #334342



After 5 Days Return To:
Mrs. Brandy W. McBee
Clerk Of Court, Cherokee County
Post Office Drawer 2289
Gaffney, S.C. 29342

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2017 AUG 18 P 12: 241

BRANDY W. MCBEE

Labronte Agnew, #334342
McCormick C.I.
386 Redemption Way
McCormick, SC 29899

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08/18/2017
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