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SEP 11 2017

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
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S.C. SUPREME COURT

Office (864) 226-5787
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email to:
hughwelborn@bellsouth.net

September 5, 2017

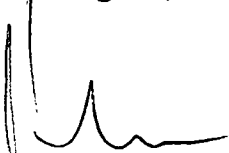
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

In RE: Andrew McElrath, #336981 vs. State of South Carolina
Case #: 2015-CP-04-1020

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Final Order of Dismissal and the original Proof of Service on Johanna C. Valenzuela, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba
Enclosures

cc: Office of the Appellate Defense
Office of the Attorney General
Client

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE R. SCOTT SPROUSE

RECEIVED
SEP 11 2017
S.C. SUPREME COURT

2015-CP-04-1020

ANDREW MCELRATH, #336981

APPELLANT,

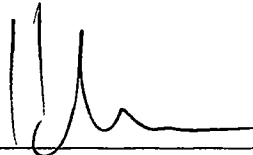
VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Andrew McElrath, #336981 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Scott Sprouse, Circuit Court Judge on November 24, 2015, and Order of Dismissal issued on December 1, 2015 and filed on January 29, 2016. The Final Order of Dismissal was filed on January 24, 2017. The Appellant received Final Order of Dismissal on September 5, 2017.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Andrew McElrath, #336981

Other Counsel of Record:
Johanna C. Valenzuela
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE R. SCOTT SPROUSE

2015-CP-04-1020

ANDREW MCELRATH, #336981

APPELLANT,


VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

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 September 5, 2017 addressed to its attorney of record Johanna C. Valenzuela, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Andrew McElrath, #336981

Anderson, South Carolina

5 September, 2017

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

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S.C. SUPREME COURT

Office Telephone:
(864) 226-5787

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September 5, 2017

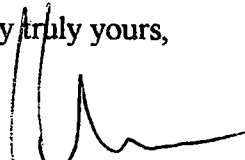
South Carolina Office of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

In RE: Andrew McElrath #336981 vs. State of South Carolina
Case #: 2015-CP-04-1020

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,



Hugh W. Welborn

HWW/sba
Enclosures

cc: South Carolina Supreme Court
Office of Attorney General
Client

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Andrew M Mcelrath,)
Plaintiff(s),)

-vs-)

South Carolina State Of,)
Defendant(s).)

MA: 22 2015

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2015CP0401020

APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other: Post Convict Rel 500
- Juvenile
- Abuse and Neglect

It appears Andrew M Mcelrath, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: .

Therefore, it is ordered that Hugh W. Welborn, Jr. hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
May 22, 2015

Circuit Judge Clerk of Court

Plaintiff Attorney:

Defendant Attorney:

John Walter Whitmire	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Andrew McElrath,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT

) 2015-CP-04-1020

) **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed April 29, 2015 ("the Application"). Respondent made its return, requesting the application be summarily 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 signed November 24, 2015, and filed December 1, 2015, provisionally denying and dismissing this action, while giving the 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 an Affidavit of Service dated January 29, 2016, serving the above-mentioned Conditional Order of Dismissal on Applicant, along with the correspondence serving the Conditional Order of Dismissal on Applicant's counsel on August 30, 2016.

Applicant or his counsel has failed to respond to either Respondent's motion to dismiss or this 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.

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COURT REPORTER AND
GENERAL SESSIONS

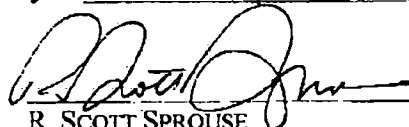
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ANDERSON SC

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises Applicant through counsel that he must file and serve a Notice of Appeal within 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 11 day of January, 2017, 2016:


R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit Court

Waltham, South Carolina.

FILED-CLERK'S OFFICE
APR 24 2017
7:11:25
COMMUNITY SERVICES
GENERAL SERVICES

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

ANDREW M. MCELRAITH, #336981

Applicant.

v.

STATE OF SOUTH CAROLINA.

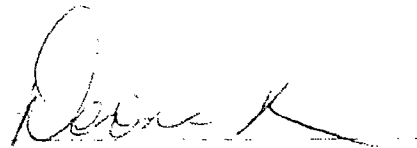
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

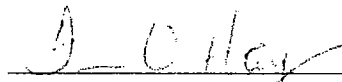
Hugh W. Welborn, Esquire
PO Box 173
Anderson, SC 29622

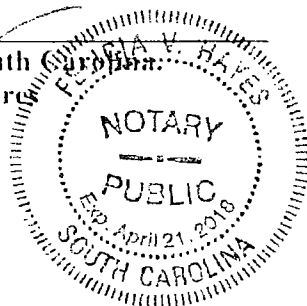
This 31st day of August, 2017.



Deonna Rogers
Legal Assistant for Respondent

SWORN to before me this 31 st day of August, 2017.


Notary Public for South Carolina
My Commission Expires



Application for Post-Conviction Relief

Applicant subsequently filed this application for post-conviction relief, in which he alleges that he is being held unlawfully for the following reasons:

1. "The solicitor withheld exculpatory evidence from the grand jury"
 - a. "The solicitor committed perjury before the grand jury to obtain indictment"
2. "Ineffective assistance of counsel"
 - a. "My lawyer failed to obtain discovery evidence"
 1. "My attorney told me the wrong plea offer and I made my decision based on this wrong information. My attorney told me the solicitor was offering me a 10 year non-violent sentence, but she (my attorney) was wrong she had told me a plea offer that was made to another client of hers"
3. "Withheld/newly discovered evidence"
 - a. "The State intentionally withheld certain evidence and perjured the grand jury with false statement to obtain a indictment on a drug charge when he had evidence the drugs wasn't mine nor in my possession"
4. "I was denied my preliminary hearings after requesting them"
5. "Solicitor withheld evidence and perjured the grand jury to obtain indictment"

Before this Court are the Anderson County Clerk of Court records regarding the subject guilty plea, records from the South Carolina Department of Corrections, and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSION OF LAW

Statute of Limitations

This Court finds that the present application for post-conviction relief 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. Under the applicable statute,

[a]n 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.

§ 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). Moreover, ignorance of the statute of limitations for filing a petition for post-conviction relief is not an excuse for late filing. Leamon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). Applicant pled guilty to the offenses he is currently challenging on April 22, 2014, and did not appeal. Applicant was therefore required to file his application challenging these guilty pleas on or before April 23, 2014. This Application was filed on April 29, 2014, which was after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute.

Newly Discovered Evidence

This Court further finds that Applicant's claim for newly discovered evidence should be summarily dismissed, as it fails to make a prima facie case that Applicant is entitled to relief. Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing (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 weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. 165 S.E.2d at 130. Applicant's claims of newly fails on both prongs. Specifically, it is extremely vague to the point that it does not present a prima facie claim for relief – nor does it sufficiently or clearly present a "rare case" requiring a vacation in the interest of justice. Before the circuit 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). Because Applicant has failed to make such a showing, this claim must be dismissed.

CONCLUSION



Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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. The Applicant shall file any reasons he may have with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Patrick L. Schmeckpeper, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 24 day of Nov., 2015. *(RM)*

(Signature)

R. LAWTON MCINTOSH
Circuit Court Judge
Tenth Judicial Circuit Court

Anderson, South Carolina

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