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February 7, 2018

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RECEIVED

FEB 09 2018

S.C. SUPREME COURT

Re: Notice of Intent to Appeal from:
Cedric Antonio Davis, #314208, v. State of South Carolina;
Case Number: 2014-CP-40-06873

Dear Sir or Madam:

I was Court Appointed, and I expect appellate defense will probably handle the appeal. Enclosed please find a Notice of Appeal, a SCACR 243(c) Explanation, along with a Proof of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance.

Sincerely,

David K. Allen

DKA/idi
Enclosures

cc: Mr. Cedric Antonio Davis
Jessica E. Kinard, Esq.

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.
(2014-CP-40-06873)

ORIGINAL

RECEIVED

FEB 09 2018

S.C. SUPREME COURT

Cedric Antonio Davis,..... Appellant

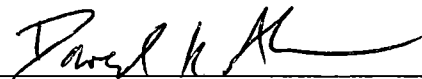
v.

State of South Carolina,..... Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal of his Application for Post-Conviction Relief filed October 30, 2014, emailed to Counsel for Applicant by the Richland County Clerk's Office on January 24, 2018. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, February 7, 2018.

THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Applicant
3241 P.O. Box (29171)
519 Meeting Street
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(803) 764-2328
(803) 764-2548 (fax)

Jessica E. Kinard, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

FEB 09 2018

THE SOUTH CAROLINA SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

ORIGINAL

Jocelyn Newman, Circuit Court Judge

Case No.
(2014-CP-40-06873)

Cedric Antonio Davis,Appellant

v.


State of South Carolina,Respondent.

PROOF OF SERVICE

- Notice of Appeal (with attached Order)
- Rule 243(c) Explanation

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, February 7, 2018.

THE ALLEN LAW FIRM, P.A.



David K. Allen
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(803) 764-2328
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Jessica E. Kinard, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Cedric Antonio Davis, #314208,)
)
Applicant,)

Docket No.: 2014-CP-40-06873

vs.)

AFFIDAVIT OF OSSIE BRIDGES

State of South Carolina,)
)
Respondent.)

I, Ossie Bridges, do hereby aver to the following:

1. My name is Ossie Bridges and I am the Aunt of Cedric Antonio Davis. I currently live in Florida with my ailing Husband, and cannot travel to Court for Cedric's court hearing set for January 31, 2017.


2. I received a phone call from Clarence Harvey while Mr. Harvey and Cedric were incarcerated telling me he would sign a sworn statement that Cedric Antonio Davis had nothing to do with the Armed Robberies or kidnapping charges. This contradicts the prior statement Clarence made to authorities around the time of his arrest.

3. I do not recall the exact date of this phone call, but I know it was after Cedric Antonio Davis' plea was entered.


Ossie Bridges

STATE OF FLORIDA
COUNTY OF Orange
Sworn to (or affirmed) and subscribed before me this
27 day of Jan, 2017
by Ossie West Bridges



(NOTARY SEAL)

(Signature of Notary Public - State of Florida)
Tricia DeLoach
(Name of Notary Typed, Printed, or Stamped)
Personally Known _____ OR Produced Identification
Type of Identification Produced Florida Driver's License

Cedric Davis
PM/22

AFFIDAVIT
VOLUNTARY SWORN STATEMENT
OF

ROBERT BROWN 9-20-15

I, ROBERT BROWN, VOLUNTEER TO MAKE THE FOLLOWING STATEMENT BELOW:

IN MAY OF 2013, CLARENCE HARVEY AKA. DIRTY AND I WERE TALKING ABOUT WHAT HE WAS IN PRISON FOR. HE EXPLAINED TO ME THAT HE PLANNED TO RECALL HIS STATEMENT IN WHICH HE LIED ON HIS CO-DEFENDANT CEDRIC DAVIS AKA FLORIDA BOY ABOUT SOME GROCERY STORE ROBBERIES THAT FLORIDA BOY NEVER KNEW OF, NOR WAS HE PART OF. DIRTY SAID THE REASONS HE LIED ON FLORIDA BOY IS BECAUSE HE DIDN'T WANT TO GO TO JAIL, HE KNEW THE COPS WAS LOOKING FOR A PERSON WITH A PLAYBOY BUNNY TATTOO AND HE KNEW WHERE FLORIDA BOY STAYED. HE TOLD ME THAT HE DIDN'T KNOW WHERE THE ~~ACTUAL GUYS STAYED THAT COMMITTED THE ROBBERIES AND THEY HAD CHANGED~~ THEIR PHONE NUMBERS. DIRTY SAID HE FELT MESSED UP ABOUT LYING AND ABOUT THE THAT THE DUDES DID SOMETHING TO THAT WAS LEFT IN THE CAR,

OUT OF CURIOSITY, I ASKED ABOUT THE DUDES WHO REALLY DID DO THE CRIMES. DIRTY SAID HE MET 3 COOL DUDES WHILE SHOOTING POOL ONE DAY. HE NEVER MENTIONED THEIR NAMES HOWEVER HE DID SAY THAT TWO OF THEM HAD MATCHING PLAYBOY BUNNY TATTOOS ON BOTH SIDES THEIR NECKS. NOT LONG AFTER MEETING THEM, HE STARTED RENTING THEM HIS SATURN FOR MONEY, NOT KNOWING THEY WERE COMMITTING ANY ROBBERIES IN IT.

WITHOUT HIM KNOWING THAT I KNEW HIS CODEFENDANT PERSONALLY, HE SAID HE LIED AND PUT HIM IN JAIL SO HE WOULDN'T HAVE TO GO AND HE FELT VERY BAD ABOUT IT. I TOLD HIM TO KEEP HIS SWITCHING BEHIND AWAY FROM ME AND TO CORRECT HIS LIES AND INTEGRITY BY TELLING THE TRUTH AND RECALL HIS STATEMENT.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE ABOVE STATEMENT IS ITS TRUE AND CORRECT.

(4)

Robert Brown
ROBERT W. BROWN

AFFIDAVIT

Voluntary Sworn Statement Of:

Clarence Harvey

Clarence Harvey

volunteer to make the following Statement:

On the April 9th 2004 BI_LO Decker Blvd. grocery store robbery the may 7th 2004 Piggly Wiggly, on Two notch RD. grocery store robbery, The May 19th 2004 BI_LO on Divine ST. grocery store robbery and the May 27th 2004 Piggly Wiggly, on Devine ST. ATT of robbery, Cedric Davis was not involve in nor did Cedric Davis admit to me that he was involve in the above grocery store robberies. I was not involve with these robberies neither however I'm willing to testify on Cedric Davis behalf under oath that Cedric Davis nor myself was involve with any of the 2004 grocery store robberies in Columbia S.C.

Clarence Harvey

the best of my knowledge.

Declare that the facts contained herein are true to

Clarence Harvey

Signature of Person Giving Statement:

Date: 10-14-14

Sworn to subscribed before Me This

_____ Day Of _____ year of _____

(L.S.)

Notary Public : My commission Expires _____

(9)

EXHIBIT B

378 S.C. 516 (2008)
662 S.E.2d 618

Nathaniel K. PELZER, Petitioner,
v.
STATE of South Carolina, Respondent.

No. 4399.

Court of Appeals of South Carolina.

Submitted June 1, 2008.

Filed June 5, 2008.

518 *518 Assistant Appellate Defender Robert M. Pachak, of Columbia, for Petitioner.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Brian T. Petrano, all of Columbia, for Respondent.

ON WRIT OF CERTIORARI

ANDERSON, J.

Nathaniel K. Pelzer ("Pelzer") appeals the circuit court's summary dismissal of his application for post-conviction relief (PCR) for failure to file within the applicable statute of limitations. We affirm.¹¹

FACTUAL/PROCEDURAL BACKGROUND

On June 4, 2001, Pelzer pled guilty to first degree criminal sexual conduct and kidnapping in Richland County. Two twenty year, concurrent sentences were imposed. Pelzer's direct appeal was withdrawn on August 31, 2001.

Pelzer filed an application for post-conviction relief on September 16, 2002. Included in his application were arguments based on (1) ineffective assistance of counsel, (2) lack of subject matter jurisdiction, (3) involuntary plea, and (4) violation of due process. The State filed a return and motion to dismiss dated July 25, 2003, and a hearing was held July 27, 2004. The State asserted Pelzer failed to comply with the one-year statute of limitations for filing post conviction relief applications. Additionally, the State moved for summary judgment on Pelzer's claim that the court lacked subject matter jurisdiction over his preliminary hearing.

519 The record indicates Pelzer's application was notarized August 30, 2002, and Pelzer asserts it was mailed the same day. However, he admits it was incorrectly sent to the South Carolina Office of Appellate Defense who then forwarded the *519 application on September 5th to the proper recipient, the Richland County Clerk of Court.

The circuit judge issued an order denying and dismissing Pelzer's application for failing to comply with the one-year statute of limitations. His claim of lack of subject matter jurisdiction was likewise dismissed. A petition for writ of certiorari dated April 11, 2005, was filed. Pursuant to Rule 227(1), SCACR, the South Carolina Supreme Court transferred the case to this court.

STANDARD OF REVIEW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C.Code Ann. § 17-27-70(b)-(c) (2003); Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). "When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000)). Likewise, this court must view the facts in the same fashion when reviewing the appropriateness of a dismissal. Leamon, 363 S.C. at 434, 611 S.E.2d at 494.

LAW/ANALYSIS

Pelzer requests his case be remanded for a full hearing arguing the statute of limitations should be equitably tolled because he filed his application in the wrong venue.

The statute of limitations for filing an application for PCR is one year. Section 17-27-45(A) of the South Carolina Code provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of 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.

520 *520 Mailing does not constitute filing. Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). "When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." Gary, 347 S.C. at 629, 557 S.E.2d at 663 (citing Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955)). "Under S.C.Code Ann. § 17-27-40 (1985), the application must be filed with clerk of the court in which the conviction took place." *Id.*

Pelzer's remittitur is dated August 31, 2001. One year after was August 31, 2002, and adding one day pursuant to Rule 6(a), SCRCP, Pelzer's last day to file his application was September 1, 2002. Because September 1st was a Sunday and Monday, September 2nd, was Labor Day, the period runs until the end of the next day that is neither a Saturday, Sunday, nor a holiday. Rule 6(a), SCRCP. Thus, the period expired Tuesday, September 3, 2002.

Pelzer admits the application was not "technically" filed within one year. However, statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system. Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996) (citing C.S.J. *Limitations of Actions* § 2 (1989)).

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id.

521 Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations. Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr., 377 S.C. 217, 230, 659 S.E.2d 213, 219 (Ct.App.2008). "Equitable tolling is reserved for extraordinary circumstances." *Id.*; see, e.g., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990) (stating that while equitable tolling was allowed where claimant actively pursued remedies but filed defective pleading, or was induced by adversary into "521 allowing deadline to pass," "[w]e have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights."); Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989) (holding statute of limitations equitably tolled for workers' compensation claim during reliance period in which employer represented to

employee that claim compensable and would be taken care of without employee filing claim). The doctrine of equitable tolling can be summarized:

The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.

Equitable tolling has been deemed available where —

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.

51 Am.Jur.2d *Limitation of Actions* § 174 (2007); see also *Hooper*, 377 S.C. at 232, 659 S.E.2d at 221.

522 *522 Here, Pelzer has not alleged any wrongdoing by the State. Rather, Pelzer relies on our Supreme Court's decision in *Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001), to demand equitable tolling. We find this reliance misplaced. Pelzer states Gary held "that the statute of limitations should be equitably tolled when an application is simply filed in the wrong venue." In Gary, the applicant claimed he had mailed his PCR application within the one-year limitation period but to the wrong place. The period had run when the application came back. Our Supreme Court did not address his equitable tolling argument finding it was not preserved. A footnote specifically clarified, "[w]e express no opinion on the validity of this defense to the statute of limitations." *Id.* at 629, 557 S.E.2d at 663, n. 2.

At the dismissal hearing, Pelzer's counsel contended Pelzer's misunderstanding of where to file was "understandable given his status as a layman and his lack of knowledge of the law." We disagree that his error resulted from any lack of legal skill rather than simple neglect. Pelzer's PCR application, which was filled out by hand and signed, clearly instructs: "When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted." Three lines below this directive, the applicant is asked to name the location of the court which imposed his sentence. Pelzer answered "Richland County." Under these facts, the narrow window by which Pelzer's application missed the statute of limitations cannot be construed as so exceptional a circumstance as to warrant equitable tolling. The reasoning of the Court of Appeals for the Fourth Circuit in denying equitable tolling to a party is particularly illuminating:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce *523 the limitation period against the party and gross injustice would result.

523

Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000) (holding *habeas* petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling).

For the foregoing reasons, we affirm the circuit court's grant of summary dismissal of Pelzer's PCR application.

AFFIRMED.

HUFF, J., and CURETON, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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CEDRIC ANTONIO DAVIS (SCDC# 314208)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : Plaintiff Defendant
or
 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
- 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 :

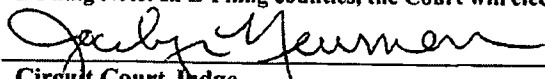
INFORMATION FOR THE JUDGMENT INDEX

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.


Circuit Court Judge

2757
Judge Code

January 23, 2018
Date

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006873

Cedric Antonio #314208 Davis

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. No. suit);
 Rule 43(k), SCRCP (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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.

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

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of Jan, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of Jan, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Cedric Antonio #314208 Davis David Kellum Allen Jessica Elizabeth Kinard

Cedric Antonio #314208 Davis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Janette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Cedric Antonio Davis (SCDC #34208),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action No. 2014-CP-40-06873

ORDER OF DISMISSAL

2018 JAN 24 AM 10:37
FILED
JESSICA KINARD
C.C.R. 6.05.

This matter comes before the Court upon Application for Post-Conviction Relief filed by Applicant Cedric Antonio Davis ("Applicant") on October 30, 2014. Respondent filed its Return and Motion to Dismiss on August 20, 2015. On January 31, 2017, a hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, David K. Allen, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

At the July 2004 term of the Richland County Grand Jury, Applicant was indicted for two counts of armed robbery, eight counts of kidnapping, and one count of attempted armed robbery. He was also indicted at the March 2005 term of the Richland County Grand Jury for another count of armed robbery and six counts of kidnapping. After cycling through a number of court-appointed attorneys, Applicant appeared *pro se* – with court-appointed "shadow counsel" – and pled guilty to all charges on March 6, 2006. He received sentences of thirty years for each count of armed robbery and kidnapping, all run concurrently. He also received a five year sentence on the charge of attempted armed robbery, to be served consecutive to the other sentences.



Applicant first requested post-conviction relief ("PCR") by application filed on May 8, 2006. After the denial of that application, a federal petition for habeas corpus was filed. That, too, was denied. On February 26, 2013, Applicant filed a petition for writ of certiorari to the United States Supreme Court, which was also denied. This action followed, renewing the allegations made in the 2006 PCR application and adding the argument of newly-discovered evidence.

Upon receipt of the instant PCR application and the State's Motion to Dismiss, this court entered a Conditional Order of Dismissal (dated August 27, 2015, and filed on August 31, 2015). The court found that "Applicant's claim of alleged 'newly-discovered evidence' is extremely vague and fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial." The court expressed its intention to summarily dismiss this application with prejudice "unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety."

In addition, in a November 24, 2015 email to the State, the court expressed its intention to order that an evidentiary hearing be held if, in 2006, Applicant had pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

In response, Applicant provided the court with a typewritten statement alleged to have been signed by Clarence Harvey, dated October 14, 2014; a handwritten statement purportedly signed by Robert Brown, dated September 20, 2015; and an Affidavit of Ossie Bridges, dated January 20, 2017.



CONCLUSIONS OF LAW

I. *Alford* Plea

A review of the transcript of Applicant's guilty plea makes it clear that it was a "straight up" guilty plea, not an "*Alford* plea." "An *Alford* plea – a guilty plea accompanied by an assertion of innocence – was held to be a constitutional admission of guilt in *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)." *Zurcher v. Bilton*, 379 S.C. 132, 136, 666 S.E.2d 224, 227 (2008). "The *Alford* court reasoned that so long as a factual basis exists for a plea, the Constitution does not bar sentencing a defendant who makes a calculated choice to accept a beneficial plea arrangement rather than face overwhelming evidence of guilt. *Alford*, 400 U.S. at 38, 91 S.Ct. 160." *Id.*

In this case, Applicant was offered the opportunity to enter an *Alford* plea in exchange for a negotiated sentence of thirty years. In fact, the State had discussed with him three alternatives – to begin a jury trial that day, to enter the negotiated *Alford* plea, or to plead "straight up." Of those alternatives, Applicant rejected both the jury trial and the negotiated *Alford* plea. The plea court also commended Applicant, stating "He has now stepped up and admitted his guilty in these cases and accepted responsibility to his part in these crimes" – an action contrary to the procedure in an *Alford* plea.

However, the nature of the guilty plea is not dispositive of this PCR application. Applicant's allegation of newly discovered evidence must also be examined. *See, Gaines v. State*, 335 S.C. 376 n.1, 517 S.E.2d 439 n.1 (1999) (explaining that in *North Carolina v. Alford*, United States Supreme Court held it was constitutional to allow accused to consent to imposition of sentence, although unwilling to admit culpability, where he intelligently concludes that a guilty plea is in his best interest **and the evidence strongly supports his guilt**) (emphasis added).



II. Newly Discovered Evidence

This court previously stated that Applicant must make a *prima facie* showing that he is entitled to relief based on newly discovered evidence before an evidentiary hearing can be held.¹ While Applicant has offered additional information to the court, he has still not made a showing that an evidentiary hearing is warranted or that the interests of justice require that his guilty plea be vacated.

"[A] valid guilty plea must be treated as final in the vast majority of cases." *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014).

[R]elief is appropriate only where the applicant presents evidence showing 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 plea to be vacated.

Id. at 470, 765 S.E.2d at 130. However, "an unconditional guilty plea involving an admission of guilty and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt." *Id.*

In this case, no one challenges Applicant's proof of the first element. Rather, it is clear that the second PCR application was filed within a month of Applicant's discovery of the new information. However, the evidence offered by Applicant simply is not "of such weight and

¹ This language suggests that the court, in its Conditional Order of Dismissal, relied on *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983), and related cases, which set forth the five factors that a court must consider when a person is convicted at trial and seeks a new trial based on after-discovered evidence. Because this case concerns Applicant's guilty plea, that test is not applicable. See, e.g., *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014) ("the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea").

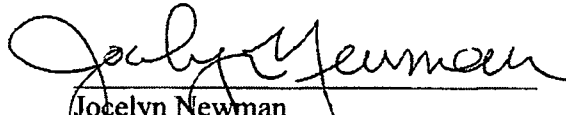


quality" that his admission of guilty should be disregarded. Applicant has offered three things – (1) the affidavit of Ossie Bridges, which attests to hearsay; (2) the unsworn statement of Robert Brown, which is also rife with hearsay; (3) and the unsworn, self-serving statement of Clarence Harvey, Applicant's codefendant in the original charges, which contends not only that Applicant is not guilty, but also that Clarence Harvey (who was also convicted of these crimes) isn't guilty either. None of this is sufficient to permit Applicant to disavow his guilty plea or to mount any serious challenge to the sworn admission of his factual guilt. At best, these statements would present challenges to the credibility of one of the State's would-be trial witnesses – which is also an insufficient reason to grant post-conviction relief. *See, e.g., Brady v. United States*, 397 U.S. 742, 757 (1970) ("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...").

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Cedric Antonio Davis be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


Jocelyn Newman
Presiding Judge

January 23, 2018
Columbia, South Carolina.

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.
(2014-CP-40-06873)

 ORIGINAL

Cedric Antonio Davis,.....Appellant

v.

State of South Carolina,.....Respondent.

RULE 243(c) EXPLANATION

SUCCESSIVENESS

Section 17-27-90 of the South Carolina Code of Laws states that grounds alleged (or those which could have been alleged) in a prior PCR application cannot be the basis for a subsequent PCR application unless the Court finds a “sufficient reason” to allow it.

There are sufficient reasons in this case. First, the Applicant had no way of knowing that Mr. Clarence Harvey would recant his statement at the time he filed his first PCR. There is no way Applicant could have been armed with this piece of evidence, since, apparently, there was no recantation until well after Applicant’s 2006 PCR application was filed.

The second sufficient reason is that Mr. Harvey apparently recanted to (at least) two different people. Attached to this “Rule 243(c) Explanation” as “Exhibit A” are two statements from an acquaintance and a family member, both confirming that Mr. Harvey admitted to lying about Applicant’s involvement in the robberies of certain grocery stores. Also included in

“Exhibit A” is a statement apparently signed by Mr. Harvey himself, recanting his initial statement incriminating Applicant. I respectfully submit that the Court should see this combination of statements as much more credible than if this was an isolated incident.

FAILURE TO COMPLY WITH FILING PROCEDURES

Section 17-27-45(a) requires applications for relief to be filed within one year of the filing of the final appeal decision. However, §17-27-45(c) essentially creates a “discovery rule” caveat to this statute. For the reasons raised in the previous section, Applicant contends he acted with reasonable diligence in discovering this new evidence, and is therefore in compliance with this statute’s requirement that he raise the issue within one-year from the time he knew (or should have known) of this new evidence [emphasis added]. Applicant filed this action on October 30, 2014, and it appears this was promptly after learning of Mr. Harvey’s recantation to his Aunt. This is the sole issue Applicant presents in his new application. You can see that Mr. Robert Brown subsequently provided a statement about a 2013 recantation of Mr. Harvey in a September 2015 statement. Moreover, there is a document now in Applicant’s possession that appears to be a signed statement by Mr. Harvey (though not notarized).

Additionally, Applicant argues any time constraints on his raising this newly discovered evidence should be *equitably tolled* under the circumstances raised in the foregoing section. The case of Pelzer v. State, 378 S.C. 516, 521 (2008), holds in part that such statutes of limitations should be tolled in circumstances where individuals are “unable to obtain vital information bearing on the existence of his or her claim.” (attached as “Exhibit B”)

PRIMA FACIE SHOWING/ ALFORD PLEA V. GUILTY PLEA

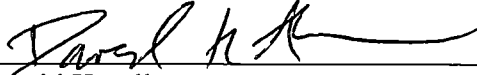
A review of the transcript in this case shows that Applicant had a lengthy discussion with The Honorable James Johnson regarding his entry of a plea under *Alford* or “straight up.”

Applicant was proceeding without an attorney, and ultimately, decided to plead straight up. It is clear in the transcript, however, that this decision was not made by Applicant to acknowledge guilt; but rather to allow for the possibility that the plea judge would sentence him to less time than the range of years to which he would have been constrained in an *Alford* plea setting. The conversation in the transcript makes it clear that Applicant was learning what an *Alford* plea was the same day he was negotiating a plea deal on his own behalf for these charges.

CONCLUSION

The Court is certainly correct in pointing out the Order of Dismissal that the statements provided to support this “newly discovered evidence” contained two (2) unsworn statements, but these statements show a potential willingness on the part of these individuals to testify in accordance therewith. Had this hearing been set for a “trial” of the PCR, rather than a Motion to Dismiss, PCR Counsel could have required the attendance of these witnesses by subpoena. The statements presented should have been sufficient to ensure Applicant had his day in Court to *then* see if the Court was persuaded as to the veracity of the witnesses providing these statements.

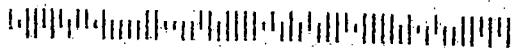
THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Applicant
3241 P.O. Box (29171)
519 Meeting Street
West Columbia, SC 29169
(803) 764-2328
(803) 764-2548 (fax)

West Columbia, South Carolina
February 7, 2018

Jessica E. Kinard, Esquire
Office of the Attorney General
P.O. Box 11549
Columbai, SC 29211



David K. Allen, Esq.
The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, SC 29171

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006873

Cedric Antonio #314208 Davis

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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 _____
- 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 Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 August 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Cedric Antonio #314208 Davis

Jessica Elizabeth Kinard

Cedric Antonio #314208 Davis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. Kinard

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Cedric Antonio Davis, #314208,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2014-CP-40-06873

CONDITIONAL ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2015 AUG 31 AM 11:27
 JEANETTE W. McQUINN
 C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed October 30, 2014. Respondent filed a return requesting summary dismissal contemporaneous with a draft of this order. This Court also has before it the records as stated in and provided with the return. The Court finds as follows:

PROCEDURAL HISTORY

Underlying Conviction

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of confinement from the Richland County Clerk of Court. Applicant was true bill indicted at the July 2004 term of the Richland County Grand Jury for two (2) counts of armed robbery (2004-GS-40-4257; -4215), eight (8) counts of kidnapping (2004-GS-40-4258; -4259; -4260; -4261; -4216; -4217; -4218; -4219), and attempted armed robbery (2004-GS-40-4246). He was further true bill indicted at the March 2005 term of the Richland County Grand Jury for armed robbery (2005-GS-40-06807) and six (6) counts of kidnapping (2005-GS-40-06808; -06809; -06810; -06812; -06815; -06816). Applicant was originally represented by the

Public Defender's Office¹, but appeared *pro se* at his plea after counsel was relieved by the Honorable Reginald I. Lloyd in a hearing on March 23, 2005. Though he appears *pro se*, Applicant had the benefit of Ms. Kana R. Johnson, Esquire as shadow counsel.

On March 6, 2006, Applicant pled guilty to all charges before the Honorable James W. Johnson, Jr. For each kidnapping and armed robbery charge, he received a sentence of thirty (30) years, all to run concurrently. He also received a sentence of five (5) years for the attempted armed robbery to run consecutively with the other thirty (30) years. He also received credit for time served.² He did not appeal his conviction or sentence.

First PCR Application (2006-CP-40-2654)

In his first application for post-conviction relief, filed May 8, 2006, Applicant alleged that he was being held in custody unlawfully for the following reasons, reproduced verbatim:

a. "Violation of Constitutional Rights 6th and 14th Amendments"

The State filed its return on December 29, 2006. An evidentiary hearing was convened on January 13, 2009 at the Richland County Courthouse before the Honorable Alison R. Lee. Applicant was present and represented by Tara Dawn Shurling, Esquire. As a result of this hearing, the application was denied and dismissed with prejudice in an order dated March 9, 2010.

A timely notice of appeal was filed by and through Ms. Shurling with the Supreme Court of South Carolina. A petition for writ of certiorari was also filed by Ms. Shurling on April 1, 2011, at which time she also filed a motion for an appeal bond. The State filed its return to the

¹ The history of Applicant's representation prior to his plea is lengthy, and is summarized in his words below regarding the federal habeas corpus petition. The history is also reproduced in the federal magistrate's report and recommendation.

² Approximately twenty-one (21) months.

motion on April 11, 2011. The Supreme Court of South Carolina denied the petition for writ of certiorari on May 12, 2011, and the remittitur was issued May 31, 2011.

Federal Habeas Corpus Petition (5:11-2256-TMC-KDW)

Applicant filed a petition for a writ of habeas corpus through counsel, Jeremy A. Thompson, Esquire, on August 30, 2011. In it, he made the following allegations (reproduced verbatim, with footnotes for clarification):

1. Ground one: The Peitioner's right of he assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Consitution, was ivolated when the trial court required the Petitioner to proceed pro se on all of his charges.

a. Supporting Facts: While his charges were pending, the Petitioner was represented by four attorneys: Jason Chehoski, LaNelle DuRant, Steven Hisker, and Christopher Hart. The first two attorneys worked for the Richland County Public Defender's Office, and Attorney DuRant received the case after Attorney Chehoski left the Public Defender's Office. Attorney DuRant was relieved as counsel on Petitioner's motion due to his dissatisfaction with her representation and Attorney Chehoski³ was appointed to represent the Petitioner. Attorney Chehoski⁴ was relieved as counsel on a joint motion by the Petitioner and Attorney Chehoski⁵ and Attorney Hart was appointed to represent the Petitioner. Attorney Hart was relieved as counsel on a joint motion by the Petitioner and Attorney Hart and the trial court refused the Petitioner's request to appoint a new attorney. The trial court then required the Petitioner to proceed pro se and appointed attorney Kana Johnson to serve as shadow counsel. The Petitioner then pleaded guilty to all of the charges against him.

The State filed a motion for summary judgment along with its return and memorandum in support on December 22, 2011. Federal Magistrate Kaymani D. West issued her report and recommendation on June 21, 2012, in which she recommended that the motion for summary judgment be granted, and the petition be dismissed with prejudice. Applicant filed objections to the report and recommendation by and through Mr. Thompson on July 9, 2012. The Honorable Timothy M. Cain of the United States District Court for the District of South Carolina issued an order on July 20, 2012 granting the State's motion for summary judgment, denying the petition

³ Petitioner incorrectly referenced Attorney Chehoski's, instead of Attorney Hisker's, name.

⁴ See footnote 3.

⁵ See footnote 3.

for relief, and denying a certificate of appealability. The State has no record of an appeal, but the Applicant's current application suggests that he filed for a writ of certiorari with the Supreme Court of the United States.⁶

Current Application

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

1. "Clarence Harvey informed my aunt Ossie Bridge through a collect phone call from prison that he fabricated his statement against me (Cedric Davis) and he's willing to testify to the above fact(s), by recanting his statement, along with submitting an affidavit to support this application. In light of the newly discover evidence, which is the recanted statement no reasonable juror would have found the petitioner guilty beyond a reasonable doubt."

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as successive and untimely. The Court had the benefit of reviewing Applicant's prior PCR and habeas corpus orders, the Richland County Clerk of Court's Records, Applicant's records from the South Carolina Department of Corrections, and all records and filings regarding this instant action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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." See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss:

⁶ After further research with the United States Supreme Court, it appears that Applicant filed a petition for writ of certiorari along with a motion to proceed *in forma pauperis* February 26, 2013. This was denied May 20, 2013.

Successive Application

The allegation must be summarily dismissed because it is impermissibly successive. 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, 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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 398 (1991). This applicant has not explicitly stated any new grounds upon which a successive PCR action can be based. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*. The grounds he alleges were known at the time of prior applications. Therefore, this application must be dismissed as impermissibly successive.

Untimely Filing

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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, 470, 469 S.E.2d 606, 607 (1996).

The Applicant was sentenced on March 6, 2006, and no appeal was filed. Applicant was therefore required to file his application before March 7, 2007. This application was filed October 30, 2014, which was well beyond the time that 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) 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 finds that the application for post-conviction relief must be summarily dismissed for the reasons discussed above.

Newly-discovered Evidence

This Court also finds Applicant’s claim of alleged “newly-discovered evidence” is extremely vague and fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. While under Section 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, Applicant has failed to set forth with any specificity what the evidence is, how it would have affected the outcome if used at trial, or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before a Court will hold an evidentiary hearing, the 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 entirely 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 Court finds the matter must be summarily dismissed.

CONCLUSION

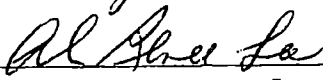
The Court finds that the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

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 ruling should not become final. Applicant shall file any reasons he may have with the Richland County Clerk of Court (P.O. Box 2766, Columbia, SC 29202-2766) and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Jessica E. Kinard, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

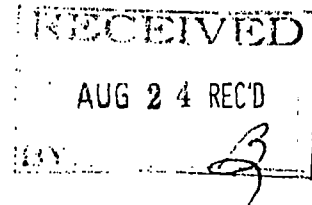
Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 27th DAY OF August, 2015.



THE HONORABLE ALISON RENEE LEE
Chief Administrative Judge for Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 19, 2015

The Honorable Alison Renee Lee
Chief Administrative Judge-CP, 5th Circuit
P O Box 192
Columbia, SC 29202-0192

Re: Cedric Antonio Davis, #314208 v. State of South Carolina
2014-CP-40-06873

Dear Judge Lee:

Enclosed please find a proposed original **Conditional Order of Dismissal** in the above-captioned case. If this Order meets with your approval, please sign it and return it to our office so that I can file it with the Richland County Clerk of Court.

Sincerely,

Jessica E. Kinard
Staff Attorney

JEK/ah
Enclosure

cc: Cedric Antonio Davis, #314208

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 CEDRIC ANTONIO DAVIS, #314208)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2014_-CP-40_06873
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Cedric Antonio Davis, #314208, Bar No. _____ Address: Broad River CI 4460 Broad River Rd Columbia SC 29210 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Jessica E. Kinard, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211-1549 Phone: _____ Fax _____ E-mail: _____ Other: _____
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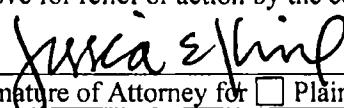
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

August 19, 2015
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

<p align="center">JUDGE'S SECTION</p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
---	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____