



ALAN WILSON
ATTORNEY GENERAL

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FEB 23 2018

S.C. SUPREME COURT

December 20, 2016

The Honorable Roger L. Couch
Presiding Judge, 7th Circuit
P.O. Box 2614
Spartanburg, SC 29304-1744

Re: Travis Sentell Rice v. State of South Carolina
2013-CP-42-4717

Dear Judge Couch:

Enclosed please find an original proposed **Final Order of Dismissal** in the above-captioned case. The Honorable J. Mark Hayes, II, Chief Judge for Administrative Purposes for the Seventh Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013, any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Hayes' stead. 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 Spartanburg County Clerk of Court to be filed and served in the enclosed envelope.

Sincerely,

Caitlin B. Hastings
Assistant Attorney General

CBH/ah
Enclosures

.cc: Travis Sentell Rice, #304580

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FEB 23 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

J. MARK HAYES, Circuit Court Judge

CASE NO. 2017-CP-42-2587

TRAVIS RICE #304580,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT,

PETITION FOR WRIT CERTIORARI

TRAVIS RICE #304580

PETITIONER

LIVESAY B Corr. Inst. 6-16A

P.O. Box 580

UNA, S.C. 29378

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ARGUMENT 5.

1. Did the Court err in holding that this action was barred by the doctrine of res judicata?

2. The Appellant argue that counsel was ineffect for failing to file a motion for a FRANK V. Delaware Hearing U.S.C.A. Const. Amend 6

3. The Appellant Argue that the Affidavit in support of search WARRANT did not set forth the reliability of informant or corroborate informants allegations did not provide magistrate with sufficient information concerning informants liability upon which magistrate could base probable cause determination U.S.C.A. Const. Amend 4

TABLES OF Authorities

CASES

State v. Martin, 347 S.C. 522, 556 S.E.2d 706	5
State v. Robinson 408 S.C. 268, 758 S.E.2d 725	5
State v. Philpot 317 S.C. 458, 454 S.E.2d 405	5
State v. Johnson 302 S.C. 243, 395 S.E.2d 167	5
State v. Jones 331 S.C. 228, 500 S.E.2d 499	5
State v. Thompson 419 S.C. 250, 797 S.E.2d 716	5
State v. Jenkins 382 S.C. 360, 474 S.E.2d 812	5

Other Authorities

S.C. ANN Code 17-27-45 (A,C)	5
S.C. ANN Code 17-27-80	5

STATEMENT OF ISSUE ON APPEAL

Did the court err in finding the application be summarily dismissed based upon the doctrine of res judicata?

STATEMENT OF THE CASE

This matter comes before the Court by way of an application for post-conviction relief filed on July 28, 2017. Respondent made its return, requesting the application be summarily dismissed because it was filed after the statute of limitations had expired, is successive to applicant's prior PCR applications and is barred by the doctrine of res judicata.

Pursuant to this request, and after reviewing the pleading in this matter and all of the records attached thereto, this court issued a Conditional Order of Dismissal filed November 30, 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.

Applicant filed three documents, one captioned Objection to Return and Motion to Dismiss, another response to Conditional Order and Response to Final Order of Dismissal. Applicant alleges ineffective assistance of counsel failure to file a FRANK V. Delaware Hearing and Illegal Search and Seizure of the 4 Amendment. The Applicant also moves for a summary judgment which was denied.

EXPLANATION

Petitioner claim fell within rule providing when there was evidence of material facts not previously presented, PCR application was to be filed within one year after date of actual discovery; and did not have to be filed within one year after conviction U.S.C.A. Const. Amend 6 17-27-45(A, C)

ARGUMENTS

IN Me Coy v. State (Opinion No. 27214, Feb 6, 2013) the S.C. Supreme Court reversed and remanded for hearing the dismissal of the petitioners PCR Application. The Supreme Court held that summary dismissal of the petitioner second PCR Application was error because genuine issues of material fact existed as to whether his claim was successive or barred by the statute of limitations. When considering the states motions for summary dismissal, where no evidentiary hearing has been held the PCR Judge must assume facts presented by the Applicant are true and view those facts in the light most favorable to the Applicant.

Lemon v. State, 363 S.C. 432, 434, 611 S.E.2d 484, 485 (2005) citing S.C. Code Ann. 17-27-80. Where an Applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR Application and those facts are not conclusively refuted by the record before the PCR Court a question of fact is raised which can only be solved by a hearing.

Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977)

CONCLUSION

The Appellant ask that the Court remanded for a hearing for the dismissal of the petition & PCR Application

Respectfully Submitted

Travis Rice

Travis Rice # 304586

Livesay B. Corr Inst

P.O. Box 580

USA, J.C. 28378

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

↳ MARK HAYES, Circuit Court Judge

CASE NO. 2017-CP-42-2887

CERTIFICATE OF SERVICE

The undersigned petitioner hereby certifies that a true copy of the petition for writ certiorari in the above reference case has been served upon Valerie Garcia Giovanardi, Esquire at the Rumbert Dennis building 1080 Assembly Street, Room 519 Columbia, S.C. 29201, and a copy of Petition for writ Certiorari, The Supreme Court of South Carolina, Daniel E. Shearouse Clerk of Court, Post Office Box 11330, Columbia, South Carolina 29211

February 15, 2018

Travis Rice

TRAVIS RICE #304580

Liverpool, Conn Inst

P.O. Box 580

UNA.S.C. 29378



ALAN WILSON
ATTORNEY GENERAL

January 17, 2018

Travis Sentell Rice, #304580
Livesay Correctional Institution
Post Office Box 580
Una, South Carolina 29378

Re: Travis Sentell Rice, #304580 v. State of South Carolina
2017-CP-42-2587

Dear Mr. Rice:

Enclosed please find a copy of the signed and filed **Final Order of Dismissal** in the above mentioned Post Conviction Relief case.

Sincerely,

Valerie Garcia Giovanoli
Assistant Attorney General

VGG/lm
Enclosures

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

TRAVIS SENTELL RICE, #304580,

Applicant,

v.

STATE OF SOUTH CAROLINA,

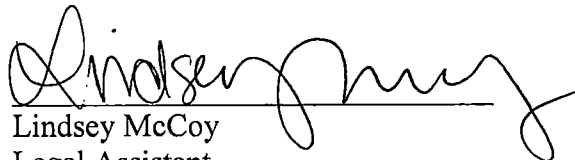
Respondent.

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:

Travis Sentell Rice, #304580
Livesay Correctional Institution
Post Office Box 580
Una, South Carolina 29378

This 17th day of January, 2018.


Lindsey McCoy
Legal Assistant

SWORN to before me this 17th day January, 2018.



Notary Public for South Carolina.

My Commission Expires: May 1st 2024

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Travis Sentell Rice, #304580,

2017-CP-42-2587

Applicant,

v.

FINAL
ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2018 JAN 16 PM 2:13
M. HOPE BLACKLEY
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
SPARTANBURG COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed on July 28, 2017. Respondent made its Return, requesting the application be summarily dismissed because it was filed after the statute of limitations had expired, is successive to Applicant's prior PCR applications and is barred by the doctrine of res judicata.

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 filed November 30, 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 a Certificate of Service from the Spartanburg County Clerk of Court dated, November 30, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant. Also attached to this Final Order and incorporated herein by reference is Applicant's response to the State's motion to dismiss and the Conditional Order of Dismissal.

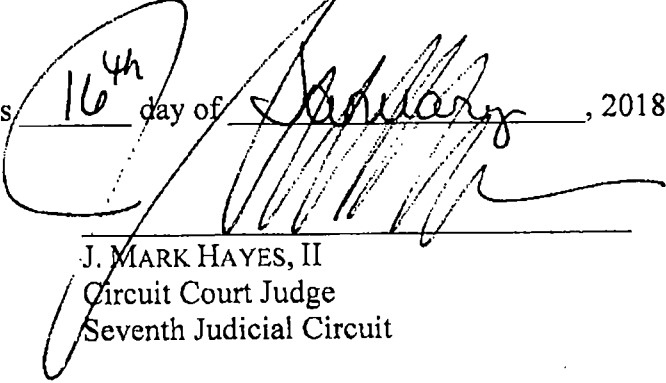
Applicant filed two documents, one captioned "Objection to Return and Motion to Dismiss" and another captioned, "Response to Conditional Order of Dismissal" on December 11, 2017, in which Applicant again alleges ineffective assistance of counsel Counsel's failure to file

a "frank v. Delaware hearing to challenge the warrant/affidavit." Applicant asserts the "warrant/affidavit" in his case did not support probable cause. He also moves for summary judgment and simply states, "the Applicant has by pass the statute of limitations."

This Court has reviewed Applicant's responses 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.**

AND IT IS SO ORDERED this 16th day of January, 2018.



J. MARK HAYES, II
Circuit Court Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
2018 JAN 16 PM 2:13
M. HOPE BLAOKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

Janey Keizer 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Travis Steel Rice

7TH JUDICIAL CIRCUIT

Applicant # *304580*

CASE # *201MCP42-2587*

State VS

CERTIFICATE OF SERVICE

Respondent

I certify that, on this date, I served a copy of the *Final Ord. Dismissed*
In this action dated *1-16* *2018* on *1-16-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Leotausti
Wendy McCarry
Travis Rice

1-16-18
(Date)

Corrie Spay
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
TRAVIS SENTELL RICE #304580
Applicant

v.

State of South Carolina
Respondent.

IN THE COURT of Common Pleas
Seventh Judicial Circuit
2017-CP-42-2587

Response to Final Order
of Dismissal

This matter comes before the Court by way of an application for post-conviction relief filed on July 28, 2017. Respondent made a Return, requesting the application be summarily dismissed because it was filed after the statute of limitations had expired. The applicant has filed a motion for summary judgment base against the statute of limitations (7-27-70 CC) authorizes the Court to grant a motion by either party for summary disposition of an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR Court a question of fact is raised which can only be resolved by a hearing of Delaney v. State, 264 S.C. 555, 556, 238 S.E.2d 677, 678, 1978. The applicant responded to state Motion to Dismiss and Conditional Order of Dismissal. Now the Applicant is responding to the final order of Dismissal, informing the judge not to dismiss the applicant application base on the response to final Order of

2018 JAN 23 AM 10:55
M. HOPE

Dismissal. The Applicant alleges ineffective assistance of Counsel, Counsel failure to file a Frank V. Delaware hearing to challenge the warrant/Affidavit upon the bases of probable cause. The Applicant found this evidence within a years time, the warrant/Affidavit does not state that the confidential Reliable Informant (CEI) was reliable.

WILEE FOLE, the applicant ask that the Judge Mark Hayes II grant him a hearing on this issue base on the evidence the applicant submit.

cc: January 19, 2018

The Honorable J. Mark Hayes II
Chief Administrative Judge, Seventh
180 Magnolia Street
Spartanburg, S.C. 29306

The Honorable M. Hope Blackley
Spartanburg County Clerk Court
Post Office Box 3483
Spartanburg, S.C. 29304-3483

DATE: 1-18-2018

Thank You
Travis Dentell Rice # 304580
Travis Dentell Rice 304580
Livesay B. Corri Just 6-18-18
P.O. Box 580
CWA, S.C. 29378

2018 JAN 22 AM 10:55
M. HOPE BLACKLEY