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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS MAR 07 2018
FIFTEENTH JUDICIAL CIRCUIT

SC Court of Appeals

STATE OF SOUTH CAROLINA)

CASE No: 2003-GS-22-1030, 1031

v.)

**ORDER GRANTING STATE'S
MOTION TO DISMISS**

JODY LYNN WARD)

Defendant.)

2017 DEC -7 PM 1:09
ALISA J. WHITE
CLERK OF COURT

This matter comes before the Court by way of the Defendant's Motion for a New Trial Based on After Discovered Evidence filed on October 28, 2014. The State of South Carolina filed its response in the form of a Motion to Dismiss Defendant's Motion on September 8, 2017.

Although *SCRCrimP* Rule 29(a) provides that a post-trial motion "may, in the discretion of the court, be determined on briefs filed by the parties without oral argument", the Court chose to hold a hearing on this matter on October 2, 2017. The Defendant and his retained attorney, Tristan Shafer were present before the Court. As a preliminary matter, the Defendant's counsel asked the Court to address the Defendant's previously filed motion to proceed *Pro-Se* on the record. The Court questioned the Defendant about this issue and if he wished to represent himself. The Defendant repeatedly stated he wanted Mr. Shafer to represent him. Therefore the Court finds the Defendant is satisfied with Mr. Shafer's representation and the motion to proceed *Pro-Se* is denied.

The Court heard oral arguments and reviewed the filings including supporting documents submitted by the parties on the remaining two pending motions. Initially, the Court finds that the

Defendant filed this motion in violation of the limitations contained in SCRCrimP Rule 29(b).

This rule states:

A motion for a new trial based on after discovered evidence must be made within a reasonable period of time after the discovery of the evidence; provided however, that a motion for a new trial based on after discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion has suspended the appeal and granted leave to make the motion.”

The Defendant filed an appeal of a prior denial of a motion for a new trial in the South Carolina Court of Appeals under Appellate case No. 2012-213222. That appeal was pending when the Defendant filed a Motion to Suspend Appeal and for Leave to File Motion for a New Trial Based on After Discovered Evidence. On October 8, 2014 the South Carolina Court of Appeals denied the Defendant’s Motion to Suspend Appeal and for Leave to File Motion for a New Trial Based on After Discovered Evidence. The Defendant, through Counsel apparently disregarded this order and filed this Motion on October 28, 2014 in violation *SCRCrimP Rule 29(b)* and *Rule 4(b) Subsequent Application for Order after Refusal*. After the improper filing of the present motion, the Court of Appeals filed their ruling affirming the dismissal of the Defendant’s earlier PCR and new trial claims on November 12, 2014.

As to the merits of the Defendant’s motion, it appears that the Defendant chose to file the present motion which includes allegations of juror misconduct under Rule 29(b) and not under a claim of Post-Conviction Relief (PCR). The record shows this Defendant has filed multiple PCR applications which have been denied and the denial affirmed on appeal. Had a juror misconduct claim been captioned as yet another PCR application, the Supreme Court’s more recent holding in McCoy v. State, 401 S.C. 363 2013 may have applied and an evidentiary hearing on the claim

applying the analysis set forth in State v. Woods, 345 S.C. 583 (2001) possible. However that is of no import in the present matter.

The claim before the Court must be reviewed under the standard set forth in State v. Spann, 334 S.C. 618 (1999):

To obtain a new trial based on after discovered evidence, the defendant must show that

- (1) the evidence is such as will probably change the result if a new trial is granted;
- (2) the evidence has been discovered since trial;
- (3) the evidence could not have been discovered prior to trial through the exercise of due diligence;
- (4) the evidence is material;
- (5) the evidence is not merely cumulative or impeaching.

The Court finds the information cited by the Defendant in the current motion, even if true, is not material evidence as to this Defendant's guilt or innocence and would not change the result if a new trial were granted.

The alleged new evidence cited in the Defendant's motion was known to the Defendant and counsel or could have been ascertained by the exercise of reasonable diligence prior to and at the time of trial in 2004 and certainly within one year after conviction. The claims are based on common last names with extended family relatives or based on personal relationships with named individuals the Defendant or Defendant's family knew personally prior to trial. Juror background information and the State's witness list was provided to the Defense during *voir dire* which occurred prior to jury selection. That information continued to remain unchanged and available for one year after conviction and is not new "evidence" as to the defendant's guilt.

Finally, the improper grand jury conduct allegation has already been adjudicated. It was included as issue two in the Defendant's October 12, 2005 Anders Final Brief of Appellant, which was reviewed and dismissed by the South Carolina Supreme Court on January 26, 2007.

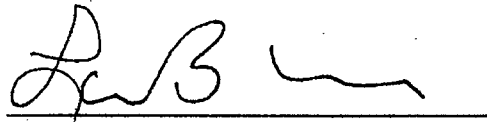
The Defendant contended during oral arguments on this motion that the claims of grand jury misconduct should be reheard due to an assertion of prosecutorial misconduct that occurred prior to the 2004 trial. The Court finds the misconduct claim was initially raised by the Defendant's trial counsel and a hearing on the merits of the claim conducted on February 27, 2004. The Court found no basis for Defendant's misconduct claims and filed a written order denying the Defendant's motion on March 8, 2004.

In conclusion, the Court finds the Defendant's allegations as evaluated by the Spann standard are insufficient and the Defendant's motion is denied.

Therefore it is ORDERED, ADJUDGED, AND DECREED that

The Defendant's Motion to proceed *Pro-Se* is **DENIED**.
The State's Motion to Dismiss is **GRANTED**.
The Defendant's Motion is **DENIED**.

AND IT IS SO ORDERED.



Judge Larry Hyman
15th Judicial Circuit

Conway, S.C.
~~October 9, 2017~~
Dec. 6