

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2017-001737

RECEIVED

APR 23 2018

S.C. SUPREME COURT

CASEY STUCKEY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUES PRESENTED

- I. Whether the PCR court properly held the recanted testimony of victim Donnell Robinson does not qualify as “newly discovered evidence” to warrant a new trial under South Carolina law because it would not change the result if a new trial was had, it could have been discovered before trial, and because the evidence is merely impeaching

- II. Whether the PCR court properly dismissed the application for post-conviction relief as untimely because it was filed more than one year after the discovery of the alleged “newly discovered evidence.”

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Petitioner was indicted at the April, 2001 term of the Sumter County Grand Jury for assault and battery with intent to kill (ABWIK), possession of a weapon during a violent crime, second degree lynching, kidnapping, accessory before fact, and accessory after fact (2001-GS-43-283). Petitioner was represented by Lauren Ferrari, Esquire. W. Harry Conner Jr., Esquire, prosecuted the case. On November 10-12, 2003, Petitioner proceeded to trial and was found guilty of second degree lynching and kidnapping. Petitioner was found not guilty of the other offenses for which he was charged. The Honorable Thomas W. Cooper, Jr. sentenced Petitioner to imprisonment for a period of twenty years for second degree lynching and life imprisonment without parole for kidnapping. The sentences run concurrently.

A timely Notice of Appeal was filed on Petitioner's behalf and an Anders¹ appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, represented Petitioner. On March 1, 2005, the South Carolina Court of Appeals dismissed the appeal. State v. Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005). The Remittitur was filed on April 13, 2005.

2005-CP-43-432

In his first application for post-conviction relief filed on April 15, 2005, Petitioner alleged that he was being held in custody unlawfully on the following grounds:

1. Ineffective assistance of trial counsel.
 - a. Indictment presented day of trial.
 - b. For not asking squash indictment or for not asking for [continuance]. This fell under reasonable standard it didn't allow attorney to prepare defense. Also, this violated 14th

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

amendment due process of law. Also, sixth amendment effective assistance of counsel.

- c. Failure to investigate a valid alibi.
2. Prosecutor Misconduct.
 - a. Prosecutor failed to send material to attorney.

Petitioner subsequently filed an amendment to his application on January 12, 2006, alleging the following:

1. "A plea of not guilty was unlawfully induced due the trial court's lack of subject matter jurisdiction; more specifically that the indictment charges failed to allege the essential elements of the crime allegedly committed by the Defendant."
2. Ineffective assistance of counsel :
 - a. "Appellate counsel was ineffective."
 - b. "Trial counsel rendered ineffective assistance of counsel by not ascertaining that there were proper investigatory techniques."
 - c. "Trial counsel rendered ineffective assistance of counsel by failure to investigate a valid alibi."
 - d. "Trial counsel rendered ineffective assistance of counsel by not asking the court to dismiss the indictment nor did the counsel ask for a continuance."
 - e. "Trial counsel rendered ineffective assistance of counsel by failing to consult with him before the trial about other charges that were brought forth that he had no knowledge of."
 - f. "Counsel did not formulate any objections nor did the Counsel allow him to defend himself on the stand."
 - g. "Trial counsel rendered ineffective assistance of counsel for lack of information pertaining to his case."
 - h. "Trial counsel did not represent him to the fullest or the best of the trial counsel ability."
3. "Applicant alleges that he had an alibi during the time the crime was committed. No one could place the Applicant at the crime but the victim. However, victim's story was very confusing. The Applicant did not know the victim and had never seen the victim before."
4. "Had Applicant been given the opportunity to voice his concerns in regards to the kidnapping and lynching charge, he would not have been convicted or would have received a lesser sentence."

Respondent filed its Return on October 4, 2005. An evidentiary hearing into the matter was convened on April 7, 2006, at the Sumter County Courthouse before the Honorable Howard P. King. Petitioner was present in court and represented by Charles T. Brooks III, Esquire.

Respondent was represented by Teri Hutson Salane, Esquire, of the South Carolina Attorney General's Office. On May 22, 2006, by written order Judge King, denied and dismissed the application with prejudice.

Petitioner filed a timely notice of appeal. On March 27, 2007, Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense filed a Johnson² Petition for Writ of Certiorari in the Supreme Court of South Carolina. By written order dated January 10, 2008, the petition was denied and counsel's request to withdraw was granted.

C/A No. 0:09-203-HFF-PJ

On January 25, 2009, Petitioner filed a pro se Petition for Writ of Habeas corpus under 28 U.S.C. § 2254. Petitioner set forth the following grounds for relief (verbatim):

1. Trial Court erred in refusing to grant a directed verdict to second degree lynching.
 - a. A violation of fourteenth amendment due process. I was found not guilty for the principle charge, and found guilty of second degree lynching. It was not enough evidence to prove guilt beyond a reasonable doubt dealing with the existence of the offense.
2. Ineffective assistance of counsel.
 - a. For not asking to squash indictment for not asking to/for contin[uance]. Fell under reasonable standard violated 14th Amendment Due Process & Six Amendment effective of assistance of counsel. Failure to investigate a valid alibi. Prosecutor misconduct failure to send material to trial attorney.
3. Prosecutor failed to send material to attorney.
 - a. Trial transcript. Trial counsel stated that she was never served with discovery package. (Page 238 & 239) line 25-12. How could we prepare fully. PCR Hearing Transcript she fully does not know for sure (pg. 32 line 24). She states I believe I prepared this before our meeting. (pg. 331-77) violation of 6th Amend.

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

4. Trial Counsel erred in misunderstanding petitioner's position on the states plea offer in the case.
 - a. The counsel failed to clarify up until the day of trial if I wanted to accept plea offer. App. pg. 301 lines 2-4 and App. 282 line 7-p. 282 line 11. Violation of sixth and fourteenth amendment writ of certiorari.

On February 8, 2010, the Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted. By written order on March 19, 2010, the Honorable Henry F. Floyd, United States Magistrate Judge, granted Respondent's motion for summary judgement.

Rule 29(b) S.C.R.Crim.P. Motion

On November 22, 2013, Petitioner filed a *pro se* motion for a new trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure in his original General Sessions file. Petitioner asserts the basis of this motion was the affidavit of allegedly recanted testimony of victim Donnell Robinson, which is the subject of this action. Petitioner failed to serve a copy of the motion upon the State.³

2016-CP-43-1660

Petitioner filed his second and current PCR application on September 8, 2016, alleging he was being held unconstitutionally based on the following allegations:

1. Newly Discovered Evidence
 - a. Victim has recanted.

Petitioner was represented on the action by Eleanor Duffy Cleary, Esquire. Respondent filed its Return and Motion to Dismiss on May 9, 2017, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, successiveness, and Petitioner's failure to make a *prima facie* showing of newly discovered evidence. A Conditional Order of

³ No further information is available from the Clerk of Court, and the file on the Public Index shows no indication that the motion was ever ruled upon.

Dismissal was filed June 5, 2017, by the Honorable R. Ferrell Cothran, Jr., provisionally denying and dismissing the actions while granting Petitioner twenty days from the date of service to provide sufficient reason why the action should not be dismissed.

In response, on June 19, 2017, counsel for Petitioner filed a “Reply to Conditional Order of Dismissal Pursuant to Section 17-27-70(B),” arguing Petitioner had filed actions based on the newly discovered evidence within one year of its discovery, although he filed a motion for a new trial pursuant to Rule 29(b), S.C.R.Crim.P., rather than a PCR application. Petitioner further argued the evidence was new and could not have been presented in his first PCR action, so his application as not successive and the evidence was sufficient to warrant a hearing. A Final Order of Dismissal was signed by Judge Cothran on July 14, 2017, and filed July 24, 2017, denying and dismissing the action with prejudice.

Petitioner filed a timely Notice of Appeal on August 18, 2017. Petitioner’s Appendix and Petition for Writ of Certiorari were filed on December 1, 2017. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

This Court gives great deference to the post-conviction relief court's findings of fact and will uphold them if there is evidence in the record to support them. Smalls v. State, 810 S.E.2d 836, 839 (2018) (S.C. case cite not yet available), reh'g denied (Mar. 29, 2018). Pure questions of law are reviewed de novo without deference to the lower court. Id. The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the petitioner bears the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. **The PCR court properly held the recanted testimony of victim Donnell Robinson does not qualify as “newly discovered evidence” to warrant a new trial under South Carolina law because it would not change the result if a new trial was had, it could have been discovered before trial, and because the evidence is merely impeaching.**

Petitioner argues the PCR court erred in finding the alleged after-discovered recantation evidence was not newly discovered evidence that would entitle Petitioner to a new trial, and that the PCR court used an incorrect legal test to analyze the evidence. However, this issue is meritless, as the PCR court used the proper analysis under South Carolina law and probative evidence supports the PCR court’s ruling that the evidence could have been discovered before the trial and the evidence is merely impeaching. Accordingly, the evidence does not satisfy all five factors of the test that would entitle Petitioner to a new trial.

The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). “The granting of a new trial because of after-discovered evidence is not favored.” *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197-98 (1978).

In order for an applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial must show that the evidence (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by

the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983); see also State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999).

In his Petition, Petitioner asserts the PCR court erred by using an incorrect test and claims the court should have analyzed the evidence under a three-part analysis enumerated in United States v. Wallace, 528 F.2d 863 (4th Cir. 1976) rather than the five-factor test adopted by this Court in Hayden. In Wallace, the United States Court of Appeals for the Fourth Circuit adopted a three-part test to be used specifically for the granting of a new trial based on recanted testimony. The test was based on a federal Seventh Circuit case from 1928, Larrison v. United States, 24 F.2d 82, 87-88 (7 Cir. 1928). However, while this three-part test may be the proper way to analyze recanted testimony in the federal system, South Carolina courts have never acknowledged or adopted this test, and this Court should not extend the doctrine of newly discovered evidence now by adopting the test.⁴

⁴ Under federal law, “[i]f a motion for a new trial is based on a witness’ recantation of trial testimony, the motion should be granted only if the court is ‘reasonably well satisfied’ (1) that the testimony given by a material witness was false; (2) the jury might have reached a different conclusion without the false evidence; and (3) the party seeking the new trial was surprised by the false testimony and was unable to meet it or did not know of its falsity until after trial.” United States v. Wilson, 624 F.3d 640, 663–64 (4th Cir. 2010) (citing United States v. Wallace, 528 F.2d 863, 866 (4th Cir.1976)). “The failure to meet any one of the three prongs is fatal.” Id. (citing United States v. Carmichael, 726 F.2d 158, 159 (4th Cir.1984)). Post-trial recantations are “looked upon with the utmost suspicion.” United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir.1973) (citation and internal quotation marks omitted).

Even if the Wallace test were the proper way to analyze Petitioner’s claim, the alleged recanted testimony would not meet all three elements of the test. Here, in order to be successful under Wallace, Petitioner must prove all three factors of the test. Even assuming the first prong of the test is met, it is unlikely the second prong could be satisfied—that the jury might have reached a different conclusion. Robinson’s alleged recantation does not completely contradict his trial testimony. Robinson testified at trial that Bush was also present and participated in the kidnapping and shooting. The trial court charged the jury with accomplice liability through the “hand of one, hand of all” doctrine, as well as a “mere presence” instruction. Even with Robinson’s new affidavit, it is possible Petitioner was present at the crime and participated in the kidnapping and lynching, even if Bush was the person who physically constrained and shot the victim. If this were the case, Petitioner would still be guilty of the crimes through the doctrine of accomplice liability. It is very unlikely that this “new evidence” would have changed the jury’s verdict.

The South Carolina Court of Appeals specifically held that the five-factor test laid out in Hayden is the proper way to analyze recanted testimony presented as after-discovered evidence in State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011). In Harris, the defendant, who had been convicted of two counts of first-degree burglary, two counts of felony driving under the influence, and assault and battery of a high and aggravated nature, filed a motion for a new trial based on after-discovered evidence. Harris provided an affidavit by the victim who testified against him at trial, which stated that his testimony at trial was incorrect and he had been threatened by the Solicitor that he would go to prison for at least thirty years if he did not testify as he was instructed. Harris, 391 S.C. at 542-43, 706 S.E.2d at 528. The victim explained in his affidavit that he wanted to “let it be known that everything I stated at the time of the trial wasn’t the absolute truth, and why I stated the things I did.” Harris, 391 S.C. at 543, 706 S.E.2d at 528. In analyzing the recanted testimony, the Court of Appeals explained:

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999). “Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” Porter, 269 S.C. at 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34–35, 109 S.E.2d 716, 729 (1959)).

This issue comes down to a matter of the credibility of the witnesses, which we leave to the trial court's discretion. ... The record supports the trial court's assessment. Accordingly, the trial court did not abuse its discretion in denying Harris's motion for a new trial. Therefore, the trial court's order is affirmed.

Petitioner also fails to meet the third prong of the Wallace test—that he was surprised by the false testimony and did not know it was false until after the trial. If Petitioner was not present at the scene of the crime and did not participate in any way, then he should not be surprised that the victim’s testimony that Petitioner kidnapped and shot him was false. Petitioner would have known before and during the trial that the victim’s testimony was false, and he could have impeached the victim at trial so as to prove the testimony’s falsity and call the victim’s credibility into question. Accordingly, the alleged recantation of Robinson does not meet the second or third prong of the Wallace test, and even if this Court were to recognize the test, Petitioner would not be entitled to a new trial.

Harris, 391 S.C. at 545–46, 706 S.E.2d at 529. The Court of Appeals affirmed the trial court's denial of the motion, rejecting Harris's contention he was entitled to a new trial based on this after-discovered evidence because he could not have discovered the false testimony during the trial and the recanted testimony was material, helpful to the State, and undoubtedly contributed to his conviction.

The facts of Harris are remarkably similar to Petitioner's case, which also involves allegedly recanted testimony of a victim who was the main witness at trial. In light of Harris, it is clear that South Carolina courts use the five-factor Hayden test to analyze claims of recanted testimony presented as after-discovered or newly discovered evidence. Accordingly, here, the PCR court used the correct standard.

Relevant Background

In the memorandum accompanying Petitioner's PCR application, he summarizes the facts from his trial as follows:

In the early morning hours of October 4, 2000, Kendell Nelson drove Donnell Robinson and two other men to an unlit backroad. One of the men, who sat in the front seat was identified by Robinson as Applicant Casey Stuckey. The other man, who sat in the backseat with Robinson was identified as Donald Bush.

According to the trial transcript, Robinson, who was "born slow, premature, and handicapped," was ordered out of the car and then shot in the lower back. After seeking help from nearby homeowners, Robinson was taken to the hospital and released two days later. Sgt. James Turner of the Sumter County Sheriffs Department questioned Robinson, who told him that Kendell Nelson, a former classmate, was part of the group involved in his shooting. Robinson did not know the other men and only described them as black males. Robinson identified Bush and Stuckey from six-person photo arrays.

At trial, he testified that had never seen Bush or Stuckey before the incident. Using the names provided by the State, he testified that Bush and Stuckey picked him up from his home and took him to "Glenn's house" where they talked. They drank and smoked marijuana there. Robinson tried to run away for an unspecified

reason and Bush ran after him and caught him. Bush put him in a car driven by Nelson. According to Robinson, Stuckey was in the passenger seat. Robinson testified that Stuckey wanted to take Robinson to the location where Robinson was eventually shot. Stuckey told him to get out of the car. Robinson testified that he complied and Bush and Stuckey also got out. According to Robinson's trial testimony, Stuckey told him to walk and as Robinson walked away from them, Stuckey shot him. They got back in the car and left him on the ground.

App. 338. At trial, the State introduced the photographic lineup, including Robinson's handwritten indication on Petitioner's photograph that he recognized him as the kidnapper. App. 147; 148. Robinson also picked out a photograph of Bush from the lineup and indicated him as the other participant. App. 146. The trial court charged the jury with instructions of "hand of one, hand of all" accomplice liability as well as a "mere presence" instruction. App. 224-225.

In his current PCR application, Petitioner presents an "affidavit" he claims is written and signed by Donnell Robinson and notarized. The document reads:

I Donnell Robinson am admitting in this statement that Casey Stuckey wasn't the person, who shot, kidnapped or beat me up. I am coming forth today to say he was falsely accused mistakenly of crimes he didn't commit and now today I want to verify the actual criminals. Today I know with my heard and total mind it was Donald Bush the man who committed these crimes against me. I am writing this statement so this innocent man Casey Stuckey can be set free.

App. 357. Petitioner claims this alleged recantation entitles him to a new trial.

Analysis

Probative evidence supports the PCR court's finding that Robinson's statement recanting his testimony fails to satisfy the Hayden factors because it probably would not change the result if a new trial was had, it could have been discovered before the trial and because it is merely impeaching evidence.

This Court has held that in order for an applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial must show that the evidence (1) is such as would probably change the result if a new trial was had; (2) has been discovered since

the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching. Hayden, 278 S.C.at 611-12, 299 S.E.2d at 855. Here, the PCR court held that, while the Facebook conversation arguably met the standards delineated in parts (2) and (4) of the test, the evidence is merely impeaching because “the affidavit allegedly written by Mr. Robinson directly impeaches his prior testimony,” and therefore did not meet all five factors required to obtain a new trial. App. 395.

A new trial based on “after discovered evidence” requires a showing that the evidence is material to a claim of actual guilt or innocence and does more than merely impeach. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). Evidence is “impeaching” so as to bar new trial if it is outside the evidence already given and impeaches that evidence by attacking the character, the motives, the integrity or veracity of those who gave the evidence. Evatt v. Campbell, 234 S.C. 1, 106 S.E.2d 447 (1959). The PCR court properly held the affidavit directly impeaches the victim’s testimony.

Robinson’s alleged recantation also fails to meet the first of the Hayden factors—that the evidence is such that would change the result if a new trial was had. Robinson’s alleged recantation does not completely contradict his trial testimony. Robinson testified at trial that Bush was also present and participated in the kidnapping and shooting. The trial court charged the jury with accomplice liability through the “hand of one, hand of all” doctrine, as well as a “mere presence” instruction. Even with Robinson’s new affidavit, it is possible Petitioner was present at the crime and participated in the kidnapping and lynching, even if Bush *was* the person who physically constrained and shot the victim. If this were the case, Petitioner would still be

guilty of the crimes through the doctrine of accomplice liability. It is very unlikely that this “new evidence” would have changed the jury’s verdict.

It is also clear that this “new evidence” could have been discovered by the exercise of due diligence before the trial. If the victim was lying in his trial statements to law enforcement and his trial testimony, and if Petitioner truly were not involved in the crime, Petitioner would have known the victim’s testimony were false before and during the trial. Evidence of the victim’s alleged false testimony could have been discovered before the trial, and Petitioner had the opportunity to investigate, interview the victim, and impeach the victim’s credibility before and during the trial. Because evidence of the victim’s allegedly false testimony could have been discovered before the trial, this “new evidence” does not meet the third prong of the Hayden factors.

Finally, it is worth noting that the PCR court found “Mr. Robinson’s written statement recanting the testimony he offered at trial is unreliable and incredible.” App. 395. This Court has previously held that; “recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (citing, State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)). The PCR court’s credibility finding is a finding of fact that should be given great deference. See Smalls v. State, 810 S.E.2d 836, 839 (S.C. 2018), reh’g denied (Mar. 29, 2018). “The credibility of newly-discovered evidence is for the trial court to determine.” Harris, 391 S.C. at 545, 706 S.E.2d at 529 (citing State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977)). “Only the trial court and not the appellate court has the power to weigh the evidence; the trial court’s judgment will not be disturbed except for error of law or abuse of discretion.” Id. “In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a

credibility assessment.” State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). “On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.” Id.

Therefore, because the PCR court used the proper analysis under South Carolina law, and because Petitioner cannot prove all five factors of the Hayden test, Petitioner is not entitled to a new trial based on newly discovered evidence. Accordingly, the PCR court’s ruling is proper under the law and is based on probative evidence in the record, and this Court should affirm the denial of post-conviction relief.

II. The PCR court properly dismissed the application for post-conviction relief as untimely because it was filed more than one year after the discovery of the alleged “newly discovered evidence.”

Petitioner asserts the PCR court erred in dismissing the application for post-conviction relief as untimely filed because he made a good faith effort to file a timely motion for a new trial on November 20, 2013, but failed to serve the State. However, Petitioner failed to file his application for post-conviction relief over the newly discovered evidence until nearly *five* years after Robinson’s affidavit was written and notarized. Petitioner’s claim is clearly barred by the statute of limitations, and the PCR court did not err in dismissed the action.

An applicant contending there is evidence of material fact not previously presented, must file his or her post-conviction relief application within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). Robinson’s affidavit is dated November 20, 2012. App. 357. Petitioner’s application was not filed until September 6, 2016, nearly five years later.

Our courts have held that “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). Moates explained:

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. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system. While this Court has held that an applicant is entitled to

equitable tolling of the statute of limitations in certain circumstances, see e.g. Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017), this Court has never extended this doctrine to include an applicant who files a post-trial motion for a new trial. Petitioner's General Sessions motion for a new trial did not and should not have tolled the statute of limitations for a post-conviction relief application for four years.

Although Petitioner asserts he was a *pro se* litigant at the time he filed in good faith his motion for a new trial in the General Sessions court in 2013, and he should not have been held to the same standard as a counselled litigant, this argument is meritless. While some cases have recognized some of the issues that challenge *pro se* litigants more than those represented by counsel, this Court has never held that *pro se* litigants need not follow the rules of procedure. *Pro se* litigants are expected to comply with the statute of limitations and the procedural requirements of bringing an action just as are other litigants. Furthermore, Petitioner was not *pro se* during the current action, and his application was filed by retained counsel. Any argument that he filed his PCR application past the statute of limitations because he was *pro se* is contradicted by the fact that his application was filed by an attorney past the statute of limitations.

Petitioner has failed to show any meritorious reason why the statute of limitations should not bar his claim filed nearly five years after his discovery of the new evidence he presents to this Court. Accordingly, this Court should affirm the dismissal of his post-conviction relief application on the grounds of untimeliness.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
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By: 
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April 23, 2018

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

CASEY STUCKEY, #297810

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

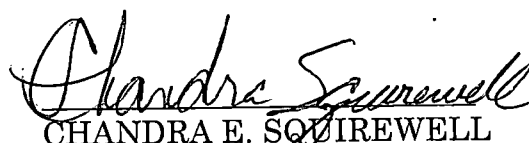
PROOF OF SERVICE

I, CHANDRA E. SQUIREWELL, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Victor R. Seeger, Esquire
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 23RD day of March 2018.


CHANDRA E. SQUIREWELL
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



RECEIVED

APR 23 2018

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

April 23, 2018

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Casey Stuckey v. State of South Carolina
Appellate Case No. 2017-001737
Lower Court Case No. 2016-CP-43-1660

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:ces
Enclosures

cc: Victor R. Seeger, Esquire
Trisha Allen, Victim Services (letter only)