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MAR 08 2017

S.C. SUPREME COURT

Date 2/16/17

Mr. Thomas,

Please find in close exhibit to the brief I just file to you please know that due to being look down I was unable to send it all at one time to meet my dead line, so I am asking that you please except this.

I thank you for your
time in this matter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

RECEIVED

Case No: 2011-CP-42-1967

Jefferet Eugene Jeter
Applicant

MAR 08 2017

Motion in Affidavit

v.
STATE OF
SOUTH CAROLINA

Respondent

S.C. SUPREME COURT

AND opposition to defendant's proposed
order of dismissal

Petitioner presents that the PCr court's judgment on January 28 2013 dismissing the case should be vacated and the Attorney General's in the name of the STATE OF SOUTH CAROLINA proposed order of dismissal be denied.

Petitioner submits that, S.C. Rules of Civil Procedure, Rule 60 (B) (3) further provided it "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or set aside a judgment for fraud upon the court. Again there is no specific time limit. Fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication" H. Lightsey, J. Flanagan South Carolina rules of civil procedure

Meritorious: "[IN] considering a Rule 60(B)(3) MOTION the threshold matter is whether the movant has demonstrated the existence of a meritorious claim or defense" Bowers v. Bowers, 304 S.C. 65, 66, 463 S.E.2d 122, 129 (Ct. App. 1991)

Petitioner presents that THE trial court's unconstitutional enhancement of Petitioner's sentence upon the following offenses without it being a prior offense in the record to support it, is fraud in its strictest since and denies the court of subject matter jurisdiction to enter a plea, and thus the PCr court ruling that there is no deficiency on behalf of counsel of not objecting to the excessive

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statutory limits see PCR TP 152, lines _____ through _____ is totally void and improper, on TP 153 ~~lines~~ _____ through 154 the court alleged. However, this court finds that although substantial, the sentence is not excessive, as it is within the parameters established by the General Assembly and based upon the Applicant's prior record. This court can find no deficiency on behalf of counsel as it relates to this issue, therefore the applicant has failed to meet his burden of proof.

Plaintiff submits that the alleged indictments 09-1419. Receiving stolen goods under \$1,000, 09-1420 Receiving stolen goods \$1,000 to \$5,000, 09-1421 obtaining property by false pretenses are not indicted as subsequent offenses, see indictments all

Plaintiff presents that the conviction is void under the 5th Amendment of the United States Constitution which provides that no one should be convicted but upon a legally sufficient indictment ^{but} upon presentment of a Grand Jury.

Here, the Grand Jury did not indict the petitioner Jeffrey Eugene Jeter for a subsequent offense for Receiving stolen goods, obtaining property by false pretense and more does his criminal record show any "criminal convictions" for the above to give the trial court jurisdiction to enhance the charges, which established that his counsel was ineffective for not objecting. Strickland v. Washington Sullivan which ultimately makes the PCR court ruling and judgment on this issue void and unworthy, and for these reasons Plaintiff rule 60 B Motion to set aside the judgment is ripe for review.

See Hope v. State, 492 SE2d 26 (SC 1997). Trial court had no jurisdiction where defendant was indicted for assault with intent to commit third degree criminal sexual assault, but the court allowed the state to amend the indictment at trial to assault with intent to commit first degree sexual assault, because the nature of the offense was changed, the court lacked subject matter jurisdiction

See Clair vs. State, 478, SE2d 54 (SC 1996). Trial court had no jurisdiction to accept guilty plea to trafficking in cocaine between 250 and 400 grams where the defendant was indicted for between 100 and 250 grams and the indictment was amended prior to the plea, because the maximum penalty was increased the nature of the offense was changed and the court lacked subject matter jurisdiction

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Petitioner submits that because the nature of the charge in this case was changed and impermissibly amended at the Plea Deal hearing for receiving stolen goods and obtaining property by false pretenses as subsequent offenses for enhancement purposes is void of South Carolina law. In fact to the contrary, although the sentence is illegal the fact that Plaintiff pled to those charges all at once is only one conviction, and as articulated that conviction is void as provided by the 5th Amendment of the United States Constitution.

Moreover, petitioner was sentenced beyond the maximum allowed. See Williams v. State, 410 S.E.2d 563 (S.C. 1991). Defendant pled guilty to assault and battery with intent to kill and received extra punishment for displaying "what appeared to be a knife during the attack." Id. at 563. The instrument was actually a barbecue fork, and trial court was without jurisdiction to accept the plea because the statute clearly states that the weapon involved must be a knife, not what appears to be a knife." Id. at 564.

See Fewell v. State, 225 S.E.2d 353 (S.C. 1976) Defendant was sentenced as if he had been convicted of possession with intent to distribute LSD rather than simple possession charge for which he was indicted and convicted, counsel failure to object to the erroneous instruction regarding applicable punishment did not deprive defendant of the right to be sentenced appropriately. The case was remanded for sentencing.

Petitioner submits that under 16-13-150 (1) and 16-13-150 (2) of S.C. Code of Laws the punishment of a crime is 1 year however the court enhanced these sentences consecutively for receiving stolen goods 10 years a piece and 10 years for obtaining goods under false pretense, see exhibit. These actions are beyond the maximum allowed and invalidates the plea.

See Rainey v. State, 414 S.E.2d 131 (S.C. 1992) Defendant was improperly sentenced as a second offender when conflict in the statutes must be resolved in favor of the later, more specific statute, which excluded defendant's earlier convictions from counting to classify him as a second offender."

Moreover, see Campbell v. State, 535, 562d 928, SC, 2008). Trial court had no jurisdiction where defendant was indicted for criminal sexual conduct (CSC) with a minor but pled guilty to lewd act on child under the age of sixteen, lewd act is not a lesser included offense of criminal sexual conduct, and grand jury never indicted defendant on lewd act and defendant did not waive indictment.

In these instances [REDACTED] petitioner submits that the PCR court order of dismissal is void and carries an extrinsic and intrinsic fraud on the court and thus the court ruling should be set aside.

Petitioner presents that the court has broad ^{discretion} in imposing criminal sentences, State v. Franklin, 267, SC 240, 226, 562d 896 (1976) absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits.

In these instances the PCR courts prejudiced plaintiff in denying his application when the record clearly shows plaintiff was over sentenced for charges he was not indicted for, thus depriving the trial court to over sentence the petitioner further shows the court as provided by [REDACTED] § 17-27-80, the PCR judge did not include any specific findings of facts and conclusions of law.

Denying plaintiff's claim that his sentences were beyond the maximum allowed, ON TYP 153 [REDACTED] lines 1 through 22 the court allege, however, this court finds that although substantial, the sentence is not excessive, as it is within the parameters established by the General Assembly and based upon the Applicant's prior record this court finds can find no deficiency on behalf of counsel as it relates to this issue. Petitioner submits that this order is vague and does not state any conclusions of law to the issue of counsel not objecting to the excessive sentencing beyond the statutory limits, see McCratt v. State, 408, 562d 241, 241 (S.C. 1991) (C

reversing order denying applicant relief and remanding for a new PCR hearing where PCR courts order failed to make specific findings of facts and conclusions of law sufficient for appellate review.

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Moreover, [REDACTED] Supreme court of South Carolina has said that it strongly encourages PCR Judges to draft their own findings of fact and conclusions of law in death penalty cases, Hall v. State, 601 S.E.2d 335, 341 (S.C. 2004). Petitioner submits that he's been erroneously sentenced to 40 years imprisonment and he's 50 years old, as this sentence could be considered a death penalty case on non-violent offenses and moves to have the court deny the states proposed order of dismissal of Petitioner's (60B) motion.

Moreover, petitioner presents that the trial court unconstitutionally enhanced petitioner's sentence for the forgery charges. Petitioner presents that though the forgery charges were subsequent offenses, the forgery charges he pled to all consisted of one conviction, and thus the court sentencing him separately was in violation of S.C. code ann. 17-25-50. See sentencing sheets _____.

So thus the court's conclusion to sentence petitioner to consecutive terms of 10 years for cases 2009-1416, to 2009-1414 and 2009-1415 is arbitrary and capricious as these charges all revolved around one office and one sentencing not independent sentences. See Trp 34 of Guilty Plea lines 13 through 19.

Petitioner presents that the judgment is no longer equitable and that the judgment should have no prospective application as provided by SCRPC (S) and that it is void as provided by SCRPC 60B(4). Petitioner presents that this case is a miscarriage of justice and the PCR court should grant the 60B motion and grant petitioner release from the erroneous conviction.

Conclusion

Based on the foregoing, the court shall grant petitioner's 60B motion and conduct a hearing on the basis of the motion.

I swear under penalty and Perjury that the foregoing is true and correct this 3rd day of 11 2016.

IN McCormick S.C. 29899

Jeffrey Seter
Jeffrey Eugene Seter

LEGAL MAIL
MAIL ROOM

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Jeffrey Eugene Jeter, #131471,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

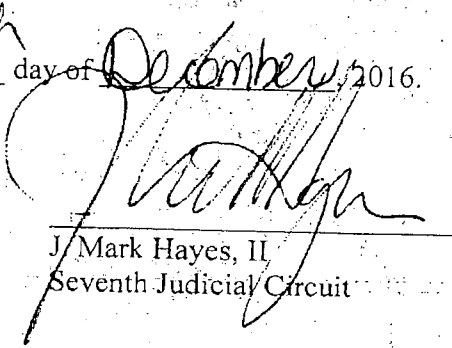
2011-CP-42-1967

ORDER

This matter comes before the Court by way of Applicant's *pro se* document titled "Motion to Alter/Amend and Reconsider Judgment Pursuant to: Rule(s) 52(b) and 59(e), SCRCiv.P." The Respondent made its Return to this Motion on December 6, 2016.

The Order Denying Applicant's 60(b), SCRCP Motion in this matter was signed by me on October 31, 2016. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order Denying Applicant's 60(b), SCRCP Motion, which was signed and then filed October 31, 2016, shall stand as it was written.

AND IT IS SO ORDERED this 12th day of December, 2016.



J. Mark Hayes, II
Seventh Judicial Circuit

Spartanburg, South Carolina

2016 DEC 13 AM 9:50

IN THE SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas

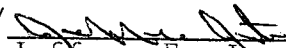
J. Mark Hayes, III, Presiding

Jeffrey E. Jeter) C/A No.2011-CP-42-1967
Appellant,)
-vs-) NOTICE OF APPEAL
State of South Carolina)
Respondent,)
_____)

NOTICE IS HEREBY GIVEN, above captioned Appellant, Jeffrey E. Jeter appeals the Order of dismissal that was entered in the above captioned on October 31, 2016. Appellant filed a Rule 52(b) & 59(e), SCRCF motion that was denied December 13, 2016 by the Honorable J. Mark Hayes, III, circuit court judge.

A copy of [both] Orders are attached hereto.

Respectfully Submitted,

/s/ 
Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURTS

Appeal from Spartanburg County
Court of Common Pleas
C/A No. 2011-CP-42-1967
J. Mark Hayes, III, Presiding

Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Notice of Appeal on the Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211. This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this ___ day of January 2017.

Sworn to and Subscribed Before Me Respectfully Submitted,

this 9th day of January 2017.

/s/

Jeffrey E. Jeter
Appellant, pro-se

1314718

Nancy C. Merchant
NOTARY PUBLIC

MY COMM. EXPIRES 1-23-2022

cc/file
cc/Daniel Shearouse, Clerk
cc/Donald J. Zelenka

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-42-1987

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

2016 NOV 30 AM 8:56
M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Motion to alter/amend and reconsider on Assistant Attorney General, Alicia A. Olive, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. mail this 23 day of November 2016.

Respectfully Submitted,

Sworn to and Subscribed before me

this 23rd day of November, 2016

/s/ Jeffrey E. Jeter
Jeffrey E. Jeter

Petitioner, pro-se

Nancy C. Merchant
NOTARY PUBLIC

My Comm. Expires 1-23-2021

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

C/A No. 2011-GS-42-1967

Jeffrey E. Jeter -- Petitioner,

-vs-

State of South Carolina -- Respondent,

2016 NOV 29 PM 4:26
M. HOPE BLACKLEY

MOTION TO ALTER/AMEND AND
RECONSIDER JUDGMENT PURSUANT TO:
RULE(S) 52(b) and 59(e), SCRCiv.P.

Jeffrey E. Jeter
SCDC# 131471
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Petitioner, pro-se

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Jeffrey Eugene Jeter, #131471,)

C/A No.: 2011-CP-42-1967

Applicant,)

**RETURN TO RULE 60(b) MOTION FOR
RELIEF FROM ORDER OF DISMISSAL**

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of Applicant's Motion for Relief From Judgment or Order Pursuant to Rule 60(b), SCRPC, filed February 22, 2016 and June 14, 2016. Respondent would submit the following:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2009 term of the Spartanburg County Grand Jury for five counts of forgery less than \$5,000 (09-GS-42-1413, -1414, -1415, -1416, and -1802), two counts of receiving stolen goods (09-GS-42-1419, and -1420), and obtaining money by false pretenses (09-GS-42-1421). He was subsequently indicted in October 2010 for two counts of petit larceny – 3rd or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Applicant pleaded guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money by false pretenses, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Applicant to ten years for the four remaining forgery charges, to be served consecutively to the other sentences and Applicant's probation revocation, for an aggregate

sentence of forty years. Applicant filed a *pro se* Motion for Resentencing. Following a hearing, Judge Couch denied the motion on December 17, 2010. A timely notice of appeal was filed, but the South Carolina Court of Appeals dismissed the appeal on December 2, 2010, for a failure to demonstrate any issues preserved for appellate review. The Remittitur was returned on December 21, 2010.

Applicant then filed an Application for Post-Conviction Relief (PCR) on May 2, 2011. Respondent made its Return on May 2, 2012. In his Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. A conflict of interest existed because Counsel (James Cheek) is associated with the Spartanburg Community Memorial Committee, which was a victim in the case and Clay Allen insured Applicant that James Cheek would not have anything to do with his case,
 - b. Applicant never received a copy of his discovery materials,
 - c. Counsel failed to object to the excessive sentence give by the Court when it exceeded the maximum authorized by law,
 - d. Counsel failed to file a Motion to withdraw guilty plea when the court failed to follow the State's recommendation,
 - e. Applicant signed a legally binding contract with the solicitor's office regarding a plea offer, which was not enforced.

~~An evidentiary hearing into the matter was convened on November 9, 2012, at the~~
Spartanburg County Courthouse before the Honorable J. Mark Hayes, II. Applicant was present at the hearing and represented by Jonathan C. Bonds, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Following the hearing, Judge Hayes denied and dismissed Applicant's PCR application by written order filed January 18, 2013.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense, filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied the petition by written order dated August 21, 2014. The Remittitur was returned to the Circuit Court on September 8, 2014.

FINDINGS OF FACT AND CONCLUSION OF LAW

Rule 60(b)(3), SCRCP, provides that the Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(5), SCRCP, provides that the Court may relieve a party from a final judgment where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." In a motion seeking relief pursuant to Rule 60(b), SCRCP, the movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRCP, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Applicant alleges his plea counsel prevented him from fully and fairly presenting his case. He alleges that an offer was made to him on October 8, 2009, that his plea counsel did not inform him of. Applicant also alleges plea counsel had a conflict of interest and that he failed to argue or advise him that the charges constituted a spree. Applicant also alleges his sentence was unconstitutionally enhanced. Specifically, Applicant alleges his prior forgery conviction was more than ten years old, and he was never informed that the offenses were charged as third or

2015 OCT 31 PM 1:11
M. HOPE BLANKLEY

subsequent or that he could receive consecutive sentences. He states he received no benefit from pleading guilty and alleges that he could have received less time if he had gone to trial.

Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to vacate its January 16, 2013, order. Applicant makes no specific allegations of any mistake, inadvertence, surprise, or excusable neglect that would entitle him to relief. Second, there are no allegations of any "newly discovered" evidence or whether the evidence meets the requirements of after-discovered evidence. Third, Applicant makes no specific allegations of fraud, misrepresentation, or other misconduct that would entitle him to relief. Fourth, Applicant's Motion makes no mention of the Order being void. Finally, Applicant makes no allegation that supports relief under Rule 60(b)(5), SCRPC. Rule 60(b) does not provide a mechanism to set aside a *criminal* conviction because it is a rule of *civil* procedure. Therefore, Rule 60(b) is not the proper vehicle to challenge the validity of Applicant's conviction.

Regardless, Applicant cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All of Applicant's allegations either have been or could have been addressed in his prior PCR action challenging his guilty plea. See Foran v. USA Quality Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). Since in his PCR action, Applicant failed to raise the argument that plea counsel should have argued or advised him that his charges could have constituted a spree, the Court did not address the issue in its order, and Applicant cannot now raise the issue as a ground for relief. See id. (holding *res judicata* also bars any issues that could have been raised in the former action).



2016 OCT 31 PM 1:21
M. HEPEL ACCELY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

Jeffrey Eugene Jeter, #131471)
)
Applicant,)
v.)
State of South Carolina,)
)
Respondent.)

C/A No.: 2011-CP-42-1967

**ORDER DENYING APPLICANT'S
RULE 60(b), SCRPC MOTION**

SPARTANBURG COUNTY
2016 OCT 31 PM 1:21
M. HOPKINS/BLACKLEY

This matter comes before the Court by way of Applicant's Motion for Relief from Judgment or Order Pursuant to Rule 60(b), SCRPC, filed February 22, 2016 and June 14, 2016. Respondent would submit the following:

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2009 term of the Spartanburg County Grand Jury for five counts of forgery less than \$5,000 (09-GS-42-1413, -1414, -1415, -1416, and -1802), two counts of receiving stolen goods (09-GS-42-1419, and -1420), and obtaining money by false pretenses (09-GS-42-1421). He was subsequently indicted in October 2010 for two counts of petit larceny – 3rd or subsequent (10-GS-42-5616, and -5617). He was represented by James A. Cheek, Esquire. On October 28, 2010, Applicant pleaded guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money by false pretenses, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Applicant to ten years for the four remaining forgery charges, to be served consecutively to the other sentences

and Applicant's probation revocation, for an aggregate sentence of forty years. Applicant filed a *pro se* Motion for Resentencing. Following a hearing, Judge Couch denied the motion on December 17, 2010. A timely notice of appeal was filed, but the South Carolina Court of Appeals dismissed the appeal on December 2, 2010, for a failure to demonstrate any issues preserved for appellate review. The Remittitur was returned on December 21, 2010.

Applicant then filed an Application for Post-Conviction Relief (PCR) on May 2, 2011. Respondent made its Return on May 2, 2012. In his Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. A conflict of interest existed because Counsel (James Cheek) is associated with the Spartanburg Community Memorial Committee, which was a victim in the case and Clay Allen insured Applicant that James Cheek would not have anything to do with his case,
 - b. Applicant never received a copy of his discovery materials,
 - c. Counsel failed to object to the excessive sentence give by the Court when it exceeded the maximum authorized by law,
 - d. Counsel failed to file a Motion to withdraw guilty plea when the court failed to follow the State's recommendation,
 - e. Applicant signed a legally binding contract with the solicitor's office regarding a plea offer, which was not enforced.

An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse before the undersigned. Applicant was present at the hearing and represented by Jonathan C. Bonds, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Following the hearing, Applicant's PCR application was denied and dismissed by written order filed January 18, 2013.

CLERK OF COURT
SPARTANBURG COUNTY
2016 OCT 31 PM 1:21
M. HOPE BLACKLEY

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense, filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied the petition by written order dated August 21, 2014. The Remittitur was returned to the Circuit Court on September 8, 2014.

FINDINGS OF FACT AND CONCLUSION OF LAW

Rule 60(b)(3), SCRCP, provides that the Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(5), SCRCP, provides that the Court may relieve a party from a final judgment where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." In a motion seeking relief pursuant to Rule 60(b), SCRCP, the movant has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Also, relief under Rule 60(b), SCRCP, requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Applicant alleges his plea counsel prevented him from fully and fairly presenting his case. He alleges that an offer was made to him on October 8, 2009, that his plea counsel did not inform him of. Applicant also alleges plea counsel had a conflict of interest and that he failed to argue or advise him that the charges constituted a spree. Applicant also alleges his sentence was unconstitutionally enhanced. Specifically, Applicant alleges his prior forgery conviction was more than ten years old, and he was never informed that the offenses were charged as third or



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M. HOPE SLAUGHTER

subsequent or that he could receive consecutive sentences. He states he received no benefit from pleading guilty and alleges that he could have received less time if he had gone to trial.

Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to vacate its January 16, 2013, order. Applicant makes no specific allegations of any mistake, inadvertence, surprise, or excusable neglect that would entitle him to relief. Second, there are no allegations of any "newly discovered" evidence or whether the evidence meets the requirements of after-discovered evidence. Third, Applicant makes no specific allegations of fraud, misrepresentation, or other misconduct that would entitle him to relief. Fourth, Applicant's Motion makes no mention of the Order being void. Finally, Applicant makes no allegation that supports relief under Rule 60(b)(5), SCRCP. Rule 60(b) does not provide a mechanism to set aside a *criminal* conviction because it is a rule of *civil* procedure. Therefore, Rule 60(b) is not the proper vehicle to challenge the validity of Applicant's conviction.

Regardless, Applicant cannot use Rule 60(b) to re-litigate issues that have already been adjudicated in prior civil actions. All of Applicant's allegations either have been or could have been addressed in his prior PCR action challenging his guilty plea. See Foran v. USA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). Since in his PCR action, Applicant failed to raise the argument that plea counsel should have argued or advised him that his charges could have constituted a spree, the Court did not address the issue in its order, and Applicant cannot now raise the issue as a ground for relief. See id. (holding *res judicata* also bars any issues that could have been raised in the former action).

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M. H. PEPPER
CLERK OF COURT
SHERMAN COUNTY

This Court finds that Applicant has failed to present any evidence proving the facts essential to entitle him to relief. See Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Accordingly, the Court finds Applicant has not shown a sufficient reason why his conviction should be reversed or otherwise vacated, or that it is no longer equitable to enforce his guilty plea.

This Court also finds that Applicant's motion must be denied because of Applicant's failure to timely file his motion. South Carolina Rules of Civil Procedure Rule 60(b)(5) states: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." The order upon which the current motion is made was executed on January 16, 2013, and filed January 18, 2013.

60(b)
(3)

Applicant was served with the order on January 22, 2013. Applicant made his motion under Rule 60(b), SCRCP, on February 26, 2016—well beyond one year after the judgment dismissing his application for post-conviction relief had been entered. Therefore, this Court finds that Applicant's motion was not filed within a reasonable time as mandated by Rule 60(b), SCRCP, nor was it filed within one year of the judgment being entered and therefore is denied and dismissed with prejudice.

(b)(3)

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M. HOPE BLACKBERRY
CLERK OF COURT

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his motion.

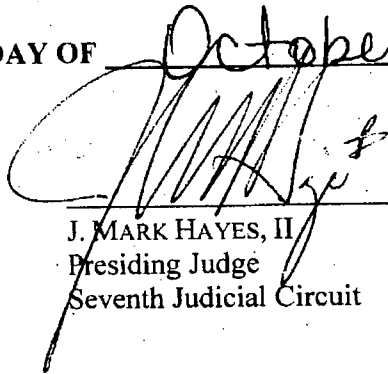
Therefore, Applicant's Motion for Relief from Judgment pursuant to Rule 60(b) is hereby **DENIED.**

The Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203,



SCACR, Rule 71.1(g), SCRCP, and Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED THIS 31 DAY OF October, 2016.



J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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M. HOPE DLACKLEY