

THE STATE OF SOUTH CAROLINA

In the Court of Appeals
Appeal From Anderson County
Court of Common Pleas

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NOV 13 2018

R. Lawton McIntosh, Circuit Court Judge
S.C. Court of Appeals

Case No. 2015-CP-04-2828

Derrick Anton Young _____ Appellant

v.

State of South Carolina _____ Respondent

NOTICE OF APPEAL

Derrick Anton Young, appeals the Final Order of Dismissal of the Honorable R. Lawton McIntosh dated April 4th, 2018. Appellant received notice of entry of this order on April 2018. On April 30th, 2018, Appellant submitted a pro se "Motion to Alter or Amend Judgment". On October 18th, 2018, the PCh Court denied Appellant's "Motion to Alter or Amend Judgment".
November 5, 2018

Derrick Anton Young
Appellant, Pro se

Derrick Anton Young, # 273562

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P.O. Box 2039
Widgeland, S.C. 29936

NOV 15 2018

Kelly Oppenheimer
Assistant Attorney General
P.O. Box 11549
Columbia S.C. 29211
Attorney For Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas

Appeal From Anderson County

Court of Common Pleas

Re. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

Case No. 2015-CP-04-2828

Derrick Anton Young _____ Appellant
v.
State of South Carolina _____ Respondent

Motion For Appointment of Counsel

Derrick Anton Young, Appellant in the above-captioned case moves this Court for appointment of counsel in the instant case, pursuant to SCA 236, and all other rules that may apply.

November 5, 2018

Derrick Anton Young
Appellant, Pro se
Derrick Anton Young, #293562
P.O. Box 2039
Ridgeland, S.C. 29936

Kelly Oppenheimer
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Attorney For Respondent

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal From Anderson County

Court of Common Pleas

H. Lawton McIntosh, Circuit Court Judge

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NOV 13 2018

SC Court of Appeals

Case No. 2015-CP-04-2828

Derrick Antwon Young _____ Appellant

v.

State of South Carolina _____ Respondent

Affidavit of Service

I, Derrick Antwon Young, Appellant in the above-captioned case have served a copy of the Appellants Notice of Appeal and Motion For Appointment of Counsel on the Respondent at P.O. Box 11549, Columbia S.C. 29211 and a copy has been placed in the mail to be filed with the clerk of the lower court.

November 5, 2018

Derrick Antwon Young
Appellant, Pro se
Derrick Antwon Young, # 273562
P.O. Box 2039
Ridge land, S.C. 29936

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APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Derrick Antron Young, #273562,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

2015-CP-04-02828

FINAL ORDER OF DISMISSAL

COMMON PLEAS AND
 GENERAL SESSIONS

2019 APR - 6 AM 9:41

FILED-CLERK'S OFFICE
 ANDERSON SC

This matter comes before this Court pursuant to an application for post-conviction relief filed by Derrick Antron Young (Applicant) on December 2, 2015. Respondent made its Return and Motion to Dismiss on March 20, 2017, requesting the application be summarily dismissed as time barred, for failing to make a *prima facie* case of newly discovered evidence, and for raising a meritless claim regarding jurisdiction.

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 March 27, 2017, provisionally denying and dismissing this action, while giving Applicant twenty 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 an Affidavit of Service dated March 7, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant. Applicant filed a response to the Conditional Order of Dismissal on April 20, 2017, entitled "Motion for Stay of Proceedings," which is incorporated herein.

In his reply to said Order, Applicant asserts he raised the issue of subject matter jurisdiction in his prior post-conviction relief matters filed in Greenville County. He further

asserts his post-conviction relief counsel:

[R]eferred directly to an [sic] transfer of jurisdiction which inferred to applicant that in order for Greenville County Court of General Sessions to have jurisdiction over the applicant and the case, then jurisdiction would have had to been [sic] transferred or waived in order for Greenville County Court of General Sessions to entertain the Anderson County charges.

Moreover, Applicant asserts although his post-conviction relief counsel did argue Applicant should be able to assert allegations of ineffective assistance of counsel with regards to his Anderson County charges, she “failed to take precautionary actions to ensure that Applicant’s claims in regards to Anderson County charges received due process consideration.”

This Court has reviewed Applicant’s response to Respondent’s Motion to Dismiss and the Conditional Order of Dismissal in its 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.

Statute of Limitations/Newly Discovered Evidence

The Court finds this application for post-conviction relief must be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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, 469 S.E.2d 606 (1996). While under S.C. Code § 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,

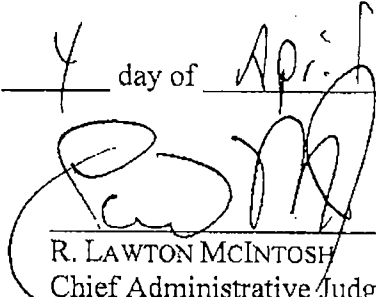
such evidence *could have been* ascertained, Applicant has failed to set forth with any specificity what the newly discovered evidence is, how it would have affected the outcome if used at trial, or why such alleged evidence was not readily discoverable at the time of his trial or his previous post-conviction relief action. Applicant alleges a video recording at his traffic stop, “which counsel has failed to view with Applicant prior to entry of the guilty plea . . . renders this guilty plea invalid.” Yet, Applicant has wholly failed to state with any specificity what this video would show and how it would have affected the outcome of his trial. Moreover, Applicant has wholly failed to provide this Court with any reason why this video could not have been discovered prior to his plea; in fact, he alleges counsel was ineffective for failing to review the video with Applicant, indicating counsel did indeed have access to this video at the time of the plea. In addition, Applicant alleges his post-conviction relief counsel failed to ensure collateral review of his Anderson County charges. However, by the mere fact Applicant attempted to raise allegations concerning his Anderson County charges in his Greenville County post-conviction relief application, Applicant could have raised these same allegations in a timely application for post-conviction relief in Anderson County. Applicant was convicted of the offenses he challenges in this application on October 9, 2012. This application was filed on December 2, 2015, well beyond the expiration of the statutory filing period.

Before the Court will hold an evidentiary hearing, 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 failed to make such a *prima facie* showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

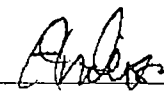
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and above, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 4 day of April, 2018.



R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

 South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2018 APR -6 AM 9:41
COMMON PLEAS AND
GENERAL SESSIONS



ALAN WILSON
ATTORNEY GENERAL

March 27, 2018

FILED-CLERK'S OFFICE
ANDERSON SC
7:19 APR - 6 AM 9:41
COMMON PLEAS AND
GENERAL SESSIONS

The Honorable R. Lawton McIntosh
Chief Administrative Judge, Tenth Circuit
Post Office Box 8002
Anderson, South Carolina 29622

Re: Derrick Antron Young, #273562 v. State of South Carolina
2015-CP-04-02828

Dear Judge McIntosh:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign it and forward it to the Anderson County Clerk of Court in the enclosed addressed envelope. If you have any questions or concerns, please do not hesitate to contact me by phone at (803) 734-0964 or by email at koppenheimer@scag.gov.

Sincerely,

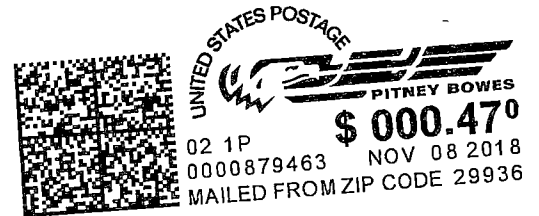
Kelly Oppenheimer
Assistant Attorney General

KO/ch
Enclosure(s)

cc: Derrick Antron Young, #273562

Derrick Antwon Young, # 273562
CB-19 - MCI
P.O. Box 2039
Ridgeland, S.C. 29936

CHARLESTON
SC 294
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Court of Appeals
Attn: Clerk's Office
P.O. Box 11433
Columbia SC 29224

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RIDGELAND CORRECTIONAL
INSTITUTION

NOV 13 2018

SC Court of Appeals

NOV 08 2018

Mailroom

273562

LEGAL MAIL

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APPELLATE DEFENSE

