

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

2019 FEB 28 AM 11:12

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Hayward L. Rogers, SCDC #278510,)

Case No.: 2016-CP-32-2815

Applicant,)

v.)

ORDER ON RECONSIDERATION

State of South Carolina,)

Respondent.)

The issue before the court is the applicant's motion to alter or amend an order dismissing his fourth (at least) state court post-conviction relief ("PCR") action. The order of dismissal was filed on May 14, 2018. The court denies the motion and dismisses this case, with prejudice.

The procedural history of this case is convoluted due to the overlapping filings by the applicant. Mr. Rogers was indicted in February 1999 for the crimes of kidnapping (1999-GS-32-813), strong-arm robbery (1999-GS-32-814), two counts of criminal sexual conduct in the first degree (1999-GS-32-815 and 818), and assault and battery with intent to kill (1999-GS-32-819). He was represented by counsel, and a jury convicted him on September 21, 2001. His convictions were upheld on appeal.

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The procedural history in state and federal court has been recited in previous orders. Without intending to list all the filings by the applicant, the file reflects that the applicant filed a federal habeas corpus action on November 18, 2002.

On October 27, 2004, while the applicant's fourth federal habeas action was pending, he filed his first state application for PCR (2004-CP-32-03932). He was represented by counsel on that PCR case. An order of dismissal was filed on August 20, 2009. A motion to alter or amend the first denial of PCR was filed on October 29, 2009.

The applicant appealed to the Supreme Court of South Carolina. On June 8, 2012, the Court affirmed. Rehearing was denied, and on August 23, 2012, the Court issued its remittitur.

While the first PCR was pending, a second PCR application was filed on September 3, 2010. It included a claim of newly-discovered evidence. That case was dismissed by order filed January 4, 2012. The applicant moved to alter or amend, which was denied by order filed September 18, 2012.

The applicant appealed the dismissal of the second PCR. The Supreme Court of South Carolina denied the appeal on November 28, 2012, and issued a remittitur on November 30, 2012.

While the second PCR case was pending, the applicant pursued twenty-three claims in an application filed in federal court on July 6, 2012. [See C/A 2:12-1858-TMC-BHH]

The applicant filed a third PCR action in state court on August 8, 2012 (2012-CP-32-03237). Counsel was appointed to represent the applicant. As amended, the third PCR case also contained an assertion of newly-discovered evidence. The State moved to dismiss, and following a hearing on that motion, the third PCR was dismissed by order filed April 29, 2016. The applicant moved to alter or amend, which was denied by order filed June 13, 2016.

An appeal was filed with the Supreme Court of South Carolina concerning the denial of the third PCR application. On July 25, 2016, the appeal was denied. The remittitur was issued on August 11, 2016.

The current PCR action was filed on August 11, 2016, and assigned Case Number 2016-CP-32-02815.¹ On that same date, several documents were filed with this action, though at

¹ On August 25, 2016, the Clerk also filed a letter from the applicant in which he stated that he had submitted a motion for a new trial and a motion for appointment of counsel in his underlying General Sessions cases, but had heard no response. Much of the confusion in proceeding on the pending PCR case is due to the overlapping requests. The

different times – some before and some after the time indicated for filing this action. Those documents were captioned as being in a different case - Case Number 2016-CP-32-01873. An affidavit of default, a motion for entry of default, and a motion to dismiss from that case were included in this file. Later on August 11, 2016, the Clerk of Court clocked-in a copy of a SLED serology report dated January 20, 1999, which relates to the underlying criminal case.

The matter pending before the court is a motion to alter or amend an order dated April 26, 2018, filed on April 27, 2018, in which the court confirmed its conditional order of dismissal of this fourth PCR action. The court had requested a proposed order from the Attorney General. The court surmises that before the applicant received a copy of the signed and filed order, the applicant submitted an objection to the proposed order of dismissal on May 2, 2018. Upon receiving a copy of the signed order, he filed this motion to alter or amend on May 14, 2018. By order filed June 1, 2018, the court notified the parties that the motion would be decided on written submissions under Rule 59(f), SCRCP, and deadlines were set.

WPK
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The dismissal of this action is based on its being improperly successive, time barred, and raising a claim that is not cognizable in a PCR action. Other grounds asserted by the State, such as laches, appear meritorious, though they do not need to be addressed summarily because of the procedural bar. The reasoning for the issuance of the dismissal was covered in the previous order. Having reconsidered the matter, the court finds no basis to alter or amend the order. This case is dismissed, with prejudice. Any request by the applicant to appoint counsel is denied because he

undersigned judge was involved in the case by virtue of being the Chief Judge for Administrative Purposes for Common Pleas court at the time. The Honorable Eugene C. Griffith, Jr. was the Chief Judge for General Sessions. Judge Griffith appointed an attorney on the motion filed in the criminal case wherein Mr. Rogers was seeking a new trial on after-discovered evidence.

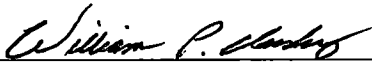
has had the benefit of counsel concerning the same issues previously, and each of his grounds has been repeatedly considered by the courts and denied.

THEREFORE, IT IS ORDERED that the dismissal of this action is made final and the application for post-conviction relief is hereby denied and dismissed with prejudice.

If the applicant desires to appeal this order, he is cautioned that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review.

[See Rule 203, SCACR as well as Rule 243, SCACR.]

AND IT IS SO ORDERED this 26th day of February, 2019.



WILLIAM P. KEESLEY
Circuit Court Judge

#4

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP3202815**

Hayward L Rogers 278510		South Carolina State of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2/28/2019	Date
Circuit Court Judge	Judge Code	

For Clerk of Court Office Use Only

This judgment was entered on **February 28th 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **February 28th 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Hayward L Rogers 278510 Broad River Correctional
Institute 4460 Broad River Rd Columbia, SC 29210

Kelly Oppenheimer Rembert C. Dennis Building PO Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
