

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

ROBERT MITCHELL, 140920,

Applicant,

v.

STATE OF SOUTH CAROLINA,

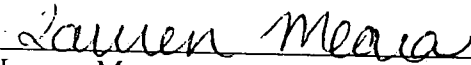
Respondent.

CERTIFICATE OF SERVICE

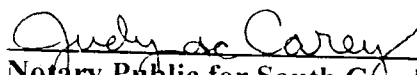
The undersigned hereby certifies that a true copy of the **Final Order** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Robert Mitchell, #140920
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210**

This 22nd day of November, 2011.


Lauren Meara
Legal Assistant for Respondent

SWORN to before me this 22nd day of November, 2011.


Notary Public for South Carolina.
My Commission Expires: May 11, 2014

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 9 day of Nov, 2011.



DOYET A. EARLY, III
Chief Judge for Administrative Purposes
Second Judicial Circuit Court

Bamber South Carolina.

submit his objections to the Conditional Order. On August 12, 2011, Respondent received Applicant's response entitled "Pro-Se Applicant's Response In Opposition to Conditional Order of Dismissal" dated August 11, 2011. In that response, Applicant set forth the following reasons why the Conditional Order should not become final:

- "In his current application dated August 13, 2010, the Applicant contends that he was ~~denied his right to direct appeal of his guilty plea conviction and sentence. For he never~~ knowingly and intelligently waived his right to a direct appeal and the undisputed material evidence, testimonial or otherwise has clearly established this fact. The sole issue this applicant is presenting to the Court for adjudication in this current application is whether Applicant 'knowingly and intelligently waived his right to direct appeal so as to warrant a White v. State review' 265 S.C. 110, 208 S.E.2d 35 (1974), Rule 227."

This is precisely the issue raised by Applicant in his 2008 Petition for State Habeas Corpus (which was construed as a PCR application) (2008-CP-06-0389), which was likewise summarily dismissed as successive in nature as Applicant could have raised his belated direct appeal issue in his original 1997 PCR application (1997-CP-06-0106), but failed to raise any such issue, thereby waiving it in future applications. *See Graham v. State*, 378 S.C. 1, 661 S.E.2d 337 (2008) (PCR applicant could have raised belated appeal claim in first application, so he is barred from raising it in successive application.)

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and herein, the application for PCR is hereby denied and dismissed with prejudice. This Court hereby advises Applicant 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.



STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS)
FOR THE SECOND JUDICIAL CIRCUIT)

Robert Mitchell, #140920,)

2010-CP-06-0189)

Applicant,)

v.)

FINAL ORDER)

State of South Carolina,)

Respondent.)

FILED FOR RECORD
2011 NOV 17 PM 2:01
RHONDA D. McILVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

— This matter comes before the Court pursuant to an application for post-conviction relief filed August 13, 2010. The State made its Return and Motion to Dismiss on June 29, 2011, requesting that the application be denied and summarily dismissed.

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 dated July 7, 2011, and filed July 12, 2011, provisionally denying and dismissing this action. This Court gave Applicant twenty (20) 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 August 1, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order first by way of a letter dated July 18, 2011, and filed with the Barnwell County Clerk on July 19, 2011, requesting the Court grant an extension of time for Applicant to file a response to the Conditional Order due to his inability to access the law library. This court withheld judgment for an additional sixty (60) days to allow for Applicant to

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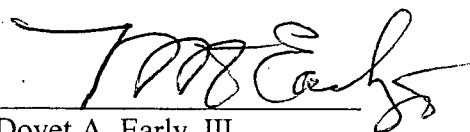
6, 2012, and filed January 11, 2012.

This Court finds that oral argument would not aid in its decision on Petitioner's motion. In his current motion pursuant to Rule 60(b), SCRCP, Applicant argues again that the court's Final Order failed to address all his arguments and that he did not waive his right to a direct appeal. Based upon full consideration of Petitioner's motion, this Court finds that Petitioner has failed to carry his burden of proving the facts essential to entitle him to relief under Rule 60(b), SCACR. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Furthermore, Petitioner has once again failed to prove that he has a meritorious application for post-conviction relief; therefore, he is not entitled to relief under Rule 60(b), SCRCP. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

IT IS THEREFORE ORDERED:

1. That the Petitioner's motion is denied and dismissed.

AND IT IS SO ORDERED this 9 day of April, 2012.



Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS

2010-CP-06-0189

Robert Mitchell,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

ORDER

FILED FOR PROCEEDING
2012 APR 16 PM 1:10
RHONDA D. McELVEIN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court by way of Petitioner's Rule 60(b), SCRPC, Motion for Relief from Judgment or Order filed March 28, 2012. Respondent made its Return to this motion on April 6, 2012.

The Applicant filed an application for post-conviction relief (PCR) on August 13, 2010. The State made its Return and Motion to Dismiss on June 29, 2011, requesting that the application be denied and summarily dismissed. 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 dated July 7, 2011, and filed July 12, 2011, provisionally denying and dismissing this action. This Court gave Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The court considered Applicant's response to the Conditional Order and issued a Final Order of Dismissal dated November 9, 2011, and filed November 17, 2011. Applicant filed a Motion pursuant to Rule 59, SCRPC on December 19, 2011. This court dismissed the motion as not timely filed in an order dated January



Robert Mitchell #140920, ...Applicant
State of South Carolina... Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of applicants NOTICE OF APPEAL to the FINAL ORDER for 2010-cp-06-0189 (PCR) and FINAL ORDER 2010-cp-06-0189 pursuant to Rule 60(B) has been served upon the South Carolina Court of Appeals by mailing (1) one copy of each ORDER and NOTICE OF APPEAL in the U.S. Mail, postage prepaid addressed to;

Post Office Box 11629
Columbia, SC 29211

This 27 day of April 2012.

s/ Robert Mitchell

Robert Mitchell #140920 (pro-se)
4460 Broad River rd.
Columbia, SC 29210

Sworn to and subscribed before me this 27 day
of April 2012.

Eugene Keith
Notary of South Carolina

My Commission Expires April 4, 2016

My Commission Expires

Robert Mitchell.... Applicant
State of South Carolina... Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of applicants NOTICE OF APPEAL to the FINAL ORDER for 2010-cp-06-0189 (PCR) and FINAL ORDER of 2010-cp-06-0189 pursuant to Rule 60(B) has been served upon the Clerk of Court Rhonda McElveen by mailing (1) one copy of each ORDER and a copy of Applicants NOTICE OF APPEAL by placing said in U.S. Mail, postage prepaid and addressed to; Post Office Box 723
Barnwell, South Carolina
29812

This 27 day of April 2012.

Robert Mitchell
Robert Mithchell (pro-se)
4460 Broad River rd.
Columbia, SC 20210

Sworn to and Subscribed before me
this 27 day of April 2012.

Eugene Keitt
NOTARY PUBLIC OF SOUTH CAROLINA

My Commission Expires April 4, 2018
MY COMMISSION EXSPIRES

RECEIVED

APR 30 2012

SC Court of Appeals

Robert Mitchell, #140920... Applicant
State of South Carolina... Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of applicants NOTICE OF APPEAL of the FINAL ORDER for 2010-cp-06-0189(PCR) and FINAL ORDER 2010-cp-06-0189 pursuant to Rule 60(B) has been served upon THE S.C. ATTORNEY GENERALS OFFICE by mailing (1) one copy of each ORDER and applicants NOTICE OF APPEAL in the U.S. Mail, postage prepaid addressed to; Dennis Bldg. Post Office Box 11549
Columbia, South Carolina 29211

This 27 day of April 2012.

Sworn to and subscribed before me
this 27 day of April 2012.

Eugene Kirtch
NOTARY OF SOUTH CAROLINA

My Commission Expires April 4, 2016
MY COMMISSION EXPIRES

s/ Robert Mitchell
Robert Mitchell
4460 Broad River rd.
Columbia, SC 29210

RECEIVED
APR 30 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

APPEAL FROM BARNWELL
COURT OF COMMON PLEAS
DOYET A. EARLY III, CHIEF JUDGE

CASE NO. 2010-CP-06-0189

ROBERT MITCHEL...

APPELLATE

STATE OF SOUTH CAROLINA...

RESPONDENT

NOTICE OF APPEAL

Robert Mitchell Appeals the ORDER [Judgment] of the Honorable Doyet A. Earley III dated November 9, 2011 of a FINAL ORDER. The Appellate also Appeals the Final Order of 2010-cp-06-0189 pursuant to Rule 60(b) dated April 9, 2012. Appellate received a written notice of entry of this ORDER/JUDGMENT on April 24, 2012.

RECEIVED
APR 30 2012
SC Court of Appeals

Respectfully Submitted,

Robert Mitchell

Robert Mitchell #140920
4460 Broad River rd.
Columbia, SC 29210

PRO-SE