

South Carolina Supreme Court
Post office Box 11330
Columbia, South Carolina 29211

April 8, 2019

Re: Appellate Case No. 2019-000429
Lower Case No. 2016CP3202815

Dear Clerk:

Enclosed is what you had sent back to me.

Sincerely,
Hayward L. Fogel

RECEIVED

APR 11 2019

S.C. SUPREME COURT

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2017 JUL 17 PM 4:20

LISA M. CONER
CLERK OF COURT

Appellate Case 2019-000429

Hayward L. Rogers, SCDC #278510,

Case No.: 2016-CP-32-2815

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina ,

MAR 18 2019

Respondent.

S.C. SUPREME COURT

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed August 11, 2016. Respondent made its Return and moved for summary dismissal, asserting the application is improperly successive, time barred, raises a claim that is not cognizable in a PCR action, and pleads other defenses barring the claims from review. After a review of the pleadings, and attachments, this Court has determined that a conditional order of dismissal should be entered.¹ The Court finds it appears the application is improperly successive, time barred, fails to state a claim which would otherwise allow presentation either on the merits or in light of these procedural bars, and, additionally, the other defenses as pled by Respondent are well-taken. The Court will, however, give Applicant the opportunity to show cause why the Order should not become final. His attention is directed to the last page of the instant Order for specific directions in making its response. In making this determination, the Court has reviewed and accepted the following facts:

I. PROCEDURAL HISTORY

Original Conviction

¹ The Court advised both parties of its decision by Memorandum dated June 30, 2017.

WPC #1

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the February 1999 term of the Lexington County Grand Jury 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). William Rast, Esquire, represented Applicant.

While the case was pending for trial, Applicant moved to dismiss all charges based on the length of pre-trial incarceration. The motion was denied and Applicant appealed. By written order dated June 8, 2001, the South Carolina Court of Appeals dismissed the appeal as premature.

Applicant proceeded to trial before the Honorable Marc H. Westbrook and a jury. The jury found Applicant guilty as indicted on September 21, 2001. Judge Westbrook sentenced Applicant to imprisonment for life without the possibility of parole for kidnapping, criminal sexual conduct, and assault and battery with intent to kill, and to a term of 15 years for strong arm robbery.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Wanda Hagler, Esquire. By opinion decided August 9, 2004, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Rogers*, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). The Court sent the remittitur out on September 9, 2004.

Federal Habeas Actions

Applicant filed his first *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on November 18, 2002. (C.A. No. 8:02-3820-MBS-BHH). On December 20, 2002, the District Court dismissed the petition without prejudice for failure to first exhaust state court remedies before turning to the federal courts for review. Petitioner would go on to file multiple federal actions attempting to challenge these same charges. (See Return, pp. 2-17). The undersigned

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2018 APR 27 AM 8:39

LISA M. COMER
CLERK OF COURT

Hayward L. Rogers, SCDC #278510, LEXINGTON SC

Case No.: 2016-CP-32-2815

Applicant,

v.

State of South Carolina,

Respondent.

RECEIVED
FINAL ORDER OF DISMISSAL

MAR 18 2019

S.C. SUPREME COURT

An application for post-conviction relief ("PCR") was filed August 11, 2016. Respondent made its Return and moved for summary dismissal, asserting the application is improperly successive, time barred, raises a claim that is not cognizable in a PCR action, and pleads other defenses barring the claims from review. The undersigned issued a Conditional Order of Dismissal on July 13, 2017, filed July 17, 2017, and allowed Applicant 20 days from the date of service in which to file a written response with the Clerk of Court.¹ Applicant thereafter sent the undersigned a letter dated July 26, 2017, to which the undersigned responded by memorandum dated July 31, 2017, filed August 2, 2017, and explained again that the Conditional Order allows time, specifically 20 days from the date of service, in which Applicant could file written objections. Applicant failed to file any written objections. Nonetheless, the court has considered what was submitted after the Conditional Order was entered.²

CWR
#1

¹ Respondent has provided an Affidavit of Personal Service confirming Applicant was served with the conditional order on August 10, 2017. It is made a part of the instant Order. (Attachment 1).

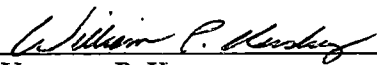
² The undersigned requested a proposed order from Respondent by memorandum dated October 11, 2017. With the submission of the proposed order via email that same day, Respondent also advised that Applicant apparently served a response on Respondent either on or about September 14th, but failed to file his response with the Clerk of Court. Respondent provided the

As discussed at length in the Conditional Order, the application is improperly successive, time barred, and fails to state a claim upon which relief could be granted. Other defenses pleaded by Respondent (specifically laches and res judicata) are well-taken given the record in this matter. In particular, the Court notes the long history of litigation which includes a direct appeal, three prior post-conviction relief actions, and several federal habeas actions. (See Conditional Order, pp. 2-7). At the time that this PCR action was filed, the Applicant had submitted motions in criminal court to seek relief, and an attorney was appointed to represent him for those motions. Applicant has had ample opportunities to submit his claims. The court finds that the Conditional Order should be made final and that this action should be dismissed.

IT IS THEREFORE ORDERED that the Court's Conditional Order of Dismissal 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 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. 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 26th day of April, 2018.



WILLIAM P. KEESLEY
Circuit Court Judge
Eleventh Judicial Circuit

Court with a copy of the document received. However, it is clear that Applicant failed to follow the instructions of the Court as set out in the Conditional Order and as reiterated in the July 31, 2017 memorandum. At any rate, this Court has reviewed documents submitted in response to the after the Conditional Order was signed and filed with the Clerk and finds Applicant fails to show sufficient cause to prevent the order from becoming final. This Court makes the document reviewed a part of the instant Order for purposes of this finding in the alternative, though such document has not been properly filed by Applicant and is not properly before the Court. (Attachment 2).

**COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT**



**LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET-SUITE 128
LEXINGTON, S.C. 29072**

**Lisa M Comer
Clerk of Court**

Mr. Rogers,

I have enclosed a copy of the order Judge Keesley signed on the Motion to Alter/Amend and to Dismiss. No hearing on this motion will be scheduled regarding that motion.

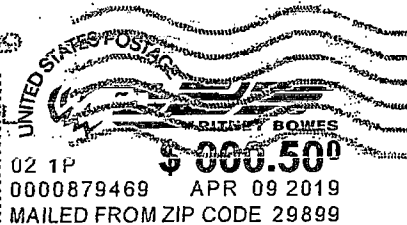
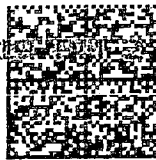
jp
A handwritten signature in black ink, enclosed within a hand-drawn circle. The signature appears to be "jp" followed by a stylized flourish.

**RECEIVED
APR 11 2019
S.C. SUPREME COURT**

HAYWARD L. ROGERS #278516
McLormick Correctional Institution
386 Redemption Way, FI-127B
McLormick, S.C. 29899

AUGUSTA, GA 320

09 APR 2019



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APR 09 2019

MAIL ROOM

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South Carolina Supreme Court
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Columbia, S.C. 29211

