

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Louis Gainey, #185519,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-40-3215

**ORDER DENYING APPLICANT'S
RULE 59(E), SCRPC, MOTION**

This matter comes before the Court by way of a *pro se* petition for writ of mandamus, filed by Louis Gainey (Applicant) in which he asks the Court to order the Honorable DeAndrea Benjamin to rule on Applicant's motion pursuant to Rule 59(e), SCRPC, alter or amend the Amended Final Order dismissing the application for post-conviction relief Applicant filed on October 29, 2013.

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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the October 2007 term of the Richland County Grand Jury for assault and battery with intent to kill (ABWIK) (2007-GS-40-03131). Deon O'Neil, Esquire and James Cooper, Esquire represented Applicant on this charge. On May 30, 2007, the State gave formal written notice that it would seek a life without parole sentence for the ABWIK charge. Applicant proceeded to trial before the Honorable L. Casey Manning on September 1, 2009, where he was found guilty on

each charge as indicted. Judge Manning sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.¹

Applicant filed a timely notice of appeal on September 4, 2009. Katherine H. Hudgins, Assistant Appellate Defender, submitted an Anders² brief on behalf of Applicant and petitioned the court to be relieved as counsel. The South Carolina Court of Appeals dismissed the appeal and granted counsel's request to be relieved. State v. Gainey, Op. No. 2012-UP-057 (S.C. Ct. App. filed February 1, 2012). The remittitur was issued on June 26, 2012.

2012-CP-40-04670

Applicant subsequently filed an application for post-conviction relief on July 6, 2012, in which he alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial counsel prejudice defendant failure request for a second mental examination opinion to deter if the defendant was incompetency to stand trial. Violation 6th amendment and 14th amendment Due process of law"
 - b. "Trial counsel prejudice the defendant by failing to object to the defendant been seen in front of the jury member eyes with shackles on in the witness stand so prejudice to a fair trial by the member of the jury"
 - c. "Trial counsel prejudice defendant for failing to prepare and to conduct a proper pre-trial investigation"
 - d. "Counsel prejudice applicant failure to object to state closing when solicitor stated you see how large the stab wound was"
 - e. "Trial counsel prejudice the applicant failing to object to the malice charge, violation 6th amendment"
 - f. "Counsel prejudice the applicant failure to object when the first officer at the seen stated that I ran by his car so fast."

An evidentiary hearing was convened on January 15, 2013, at the Richland County Courthouse. David E. Belding, Esquire, represented applicant, who was present at the hearing

¹ Applicant had prior convictions for voluntary manslaughter (1991-GS-40-5855) and arson (1991-GS-40-5854).

² Anders v. California, 386 U.S. 738 (1967).

and testified on his own behalf. Assistant Attorney General Robert D. Corney, Esquire, represented Respondent. On March 8, 2013, the Honorable G. Thomas Cooper, Jr., issued an Order of Dismissal wherein Judge Cooper denied and dismissed Applicant's claims.

Applicant appealed the decision made by the post-conviction relief court on March 20, 2013. Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a Johnson³ petition on Applicant's behalf and requested to be relieved as counsel. The Supreme Court of South Carolina denied the petition and granted counsel's request to withdraw on October 8, 2014. Gainey v. State, S.C. Sup. Ct. Order dated October 8, 2014. The remittitur was issued on October 24, 2014.

2013-CP-40-6592

Applicant filed a second post-conviction relief action on October 29, 2013. Respondent made its Return and Motion to Dismiss on April 11, 2014, based on the expiration of the statute of limitations and the presumption against successive post-conviction relief applications. A Conditional Order of Dismissal was issued on May 7, 2014, and served on Applicant on May 29, 2014. Applicant filed a "Return to Respondent's Conditional Order of Dismissal and Return" on June 3, 2014. The Honorable Robert E. Hood signed the Final Order of Dismissal on June 30, 2014. Subsequently, Applicant filed a "Notice and Motion for 59(e) Motion" on July 16, 2014.

In Applicant's motion, he alleged the Final Order of Dismissal did not address his response to the Conditional Order of Dismissal, the fifth allegation contained in his amended post-conviction relief application was not addressed, or his due process claims regarding the application of Martinez v. Ryan.⁴ Subsequently, Applicant filed a "Notice and Motion to Show Cause" on December 8, 2014, requesting Respondent show cause as to why it had not responded

³ 294 S.C. 310, 364 S.E.2d 201 (1988).

⁴ 566 U.S. 1 (2012).

to the Rule 59(e) motion. Respondent filed its Return to Applicant's Rule 59(e), SCRCP, Motion on May 29, 2015. An Amended Final Order of Dismissal was filed by Judge Hood on June 19, 2015.

2015-CP-40-3215 (First Writ of Mandamus)

Applicant filed a Notice and Motion for Writ of Mandamus on May 28, 2015. In this petition, Applicant alleged Assistant Attorney General J. Clayton Mitchell and the Honorable Robert E. Hood failed to act upon their ministerial duties by not responding to his Rule 59(e), SCRCP, Motion filed in 2013-CP-40-6592. Respondent filed a Motion to Dismiss on October 16, 2015. Applicant then filed several additional documents: "Plaintiff's Reply to Defendant's Motion to Dismiss" on October 28, 2015; "Notice and Motion to Dismiss ALL Finals Order of Dismissal" on November 3, 2015; and "Request for Leave to Amend Writ of Mandamus" on December 14, 2015. A hearing into the matter was convened before the undersigned. The Court then issued a series of Form 4 Orders on January 29, 2016, granting Respondent's motion for dismissal and denying Applicant's request for a writ of mandamus.

On February 19, 2016, Applicant filed a "Notice of Motion and Motion for Rehearing Pursuant to Rule 59(a) and Rule 59(e)." Although this motion was time-stamped on February 25, 2016, it is not located on the public index and was not received by Respondent or the undersigned until approximately November 16, 2016, after Applicant's second mandamus action was filed, as discussed below. In this motion, Applicant alleges this Court's Form 4 Orders did not address his request for leave to amend his writ of mandamus. Further, Applicant argues the second Form 4 Order incorrectly states Judge Hood denied the Rule 59(e) motion in the Amended Final Order issued in 2013-CP-40-6592.

2016-CP-40-2449⁵ (Second Writ of Mandamus)

Applicant filed a second "Notice and Motion for Writ of Mandamus" on April 15, 2016. In this action, Applicant alleges Assistant Attorney General J. Clayton Mitchell failed to respond to his motions pursuant to Rule 59(a) and Rule 59(e) in case number 2015-CP-40-3215. Applicant also alleges the undersigned failed to make a ruling upon his motion for rehearing pursuant to Rule 59(a) and Rule 59(e) in case number 2015-CP-40-3215. Respondent filed a Motion to Dismiss on behalf of Assistant Attorney General Clayton Mitchell and the undersigned on July 5, 2016. Applicant objected to the Motion to Dismiss on July 21, 2016, and filed a Motion to Reconvene the Evidentiary Hearing on September 6, 2016. On November 29, 2016, Respondent filed a pre-hearing brief after receipt of the clocked copy of the Rule 59(a) and Rule 59(e) motions filed in 2015-CP-40-3215. A hearing on Respondent's Motion to Dismiss was convened before the Honorable Jean Hofer Toal on December 1, 2016, and a ruling on that matter is still pending.

⁵ While his Writ of Mandamus was pending in the South Carolina Circuit Court, Applicant filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on August 18, 2015. On September 3, 2015, the Honorable Kaymani D. West, United States Magistrate Judge, issued an order directing Respondent to file a response to the *pro se* Petition for Writ of Habeas Corpus. Respondent filed its Return and Memorandum of Law in Support of Respondent's Motion for Summary Judgment on October 16, 2015. A text order was entered by Judge West on November 24, 2015, in response to Applicant's Motion to Stay because of a pending Writ of Mandamus action and a Motion for Extension to respond to the Respondent's Motion for Summary Judgment. The court granted the extension of time and required the parties to submit status updates on the mandamus action on December 7, 2015. On May 23, 2016, Judge West filed a Report and Recommendation recommending the court deny Applicant's motion to stay and grant Respondent's motion for summary judgment. In an Order filed September 30, 2016, the Honorable Bruce Howe Hendricks, United States District Judge, adopted the Magistrate's Report and Recommendation, denied Applicant's motion to stay and motion to amend, and granted Respondent's motion for summary judgment. Gainey v. Cartledge, 5:15-3253-BHH. Applicant then filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit on October 28, 2016. The United States Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed the appeal on February 22, 2017. (No. 16-7491).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In his Rule 59(a) and Rule 59(e), SCRCP, motions filed February 25, 2016, Applicant alleges this Court's Form 4 Order did not address his request for leave to amend his writ of mandamus. Applicant further alleges the Form 4 Order incorrectly states Judge Hood denied the Rule 59(e) motion, because, according to Applicant, the Amended Final Order states only that Judge Hood *heard* the Rule 59(e) motion, but it did not *deny* the motion.

This Court issued three Form 4 Orders in this case, all filed on January 29, 2016. The first Order denied Applicant's motion for a writ of mandamus. The second Order granted the Assistant Attorney General's motion to dismiss on the basis Judge Hood heard the 59(e) motion and denied it in the Amended Final Order of Dismissal issued June 19, 2015. The third Order stated Applicant's "Motion to Dismiss ALL Final Orders of Dismissal" was withdrawn.

After review of Applicant's filings and the orders previously issued, this Court is not persuaded to alter or amend the judgments contained in any of the Form 4 Orders previously issued. Applicant initially filed this action seeking a writ of mandamus requiring Respondent and Judge Hood to respond to and rule upon his Rule 59(e), SCRCP, motion, filed in the 2013 PCR action (2013-CP-40-6592). This Court has reviewed the Amended Final Order of Dismissal issued in that case and finds it clearly states Judge Hood reviewed the motion, considered the various bases of Applicant's request for reconsideration, and denied relief. Additionally, although not explicitly addressed by the January 29, 2016, Form 4 Orders, this Court finds Applicant has failed to show sufficient cause as to why he should be granted leave to amend his motion for a writ of mandamus. The relief Applicant sought through his request for mandamus was to compel Judge Hood to rule on the Rule 59(e), SCRCP motion, filed in 2013-CP-40-6592. As noted above, this Court has concluded Judge Hood's did so and issued an Amended Final

Order based thereon. Therefore, there is no basis for a writ to issue and no good cause to allow Applicant to amend this cause of action where he has already received the relief sought.

CONCLUSION


Based on the foregoing, this Court finds and concludes Applicant's Rule 59(a) and Rule 59(e) motions shall be denied with prejudice. This Court therefore reiterates and reaffirms the judgments contained in the Form 4 Orders of January 29, 2016, and finds Applicant's motion for a writ of mandamus must be denied, and this action should be dismissed.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Notice of Motion and Motion for Rehearing Pursuant to Rule 59(a) and Rule 59(e) are denied with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 29 day of April, 2019.



DEANDREA G. BENJAMIN
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

