

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Post Conviction Relief

Deadra L. Jefferson, Circuit Court Judge

Lower Court Case No.: 2019-CP-25-00341

Courtney Sease #328318,..... Petitioner

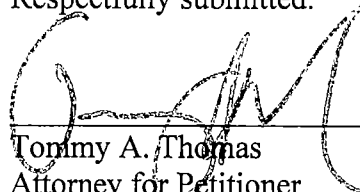
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Courtney Sease #328318, appeals the Final Order of Dismissal, signed by The Honorable Deadra L. Jefferson on October 21, 2020 and filed on October 26, 2020. which includes the Conditional Order of Dismissal signed by the Honorable Deadra L. Jefferson on July 22, 2020 and filed on July 27, 2020. Appellant received written notice of entry of this order on January 7, 2021.

Respectfully submitted.



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 8, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

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

Courtney Sease, #328318,)
Applicant,)

Case No.: 2019-CP-25-00341)

FILED)
_____/AM/PM)
OCT 28 2020)

FINAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent. MYLINDA D NETTLES)
CLERK OF COURT)
HAMPTON COUNTY, SC)

This matter comes before this Court by way of an application for post-conviction relief filed by Courtney Sease (Applicant) on August 28, 2019. Respondent filed a return to this application, requesting that it be summarily dismissed pursuant to S.C. Code Ann. § 17-27-70.

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. In provisionally dismissing this application, this Court found that Applicant's claim failed to establish he was entitled to relief based on either a newly discovered evidence standard or a juror misconduct standard. This Court found the information did not establish juror misconduct under McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013) because the information was not intentionally concealed, would not have been material to whether to strike the jurors, and in no way established bias against Applicant. Moreover, the Court notes that "juror misconduct discovered post-trial is not properly considered 'newly discovered evidence'; rather, it is a separate basis for a new trial."¹ Id. (citing State v. Sheppard, 155 Vt. 73, 582 A.2d 116, 118 (1990) (noting evidence of juror misconduct is not properly considered newly discovered evidence because it has no bearing on the issue of innocence or guilt and does not concern the substance of the State's case or an accused's defense).

¹ The Court further notes that this Order does not preclude the Applicant from raising this issue as a separate basis for a motion for new trial.

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The Court also found the claim was untimely, as more than a decade passed between his trial and the filing of this third application for relief and this alleged evidence could have and should have been discovered earlier with due diligence if it happened in open court as Applicant's affiants claim. The Court found that in viewing the information presented in the light most favorable to Applicant, he failed to make a prima facie showing he was entitled to relief and announced its intention to summarily dismissed the action. This conditional order of dismissal was signed July 22, 2020, and filed July 27, 2020, provisionally denying and dismissing this action, while giving the 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 a Certificate of Service dated August 19, 2020, serving the above-mentioned Conditional Order of Dismissal on Applicant's counsel.

Applicant responded to the motion to dismiss and conditional order of dismissal. In his return to the motion to dismiss and reply to the conditional order of dismissal, Applicant argues he has established a prima facie showing of newly discovered evidence based recent reports from his mother and sister that two jurors gave the "thumbs up" sign to the victim's family members after the verdict. Despite the significant passage of time between Applicant's trial where the gesture was observed and the filing of this successive application, Applicant nonetheless argues this allegation is timely because he just discovered this information and asserts he could not have known or discovered this earlier because his mother and sister "did not believe it was important" until March of 2019. Applicant concedes, "[a] thumbs up sign for jurors does not directly relate to Applicant's guilt or innocence in a global sense", but then wildly speculates this establishes "potential influence by the State or the victim's family" without absolutely no evidence to support

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such a strong claim. Even in his return and objection to the conditional order, this Court finds Applicant has still failed to establish any evidence or facts entitling him to an evidentiary hearing. Accordingly, pursuant to S.C. Code Ann. § 17-27-70, this Court finds this action must be summarily dismissed.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 21st day of October, 2020.



DEBRA L. JEFFERSON
Chief Administrative Judge for Common Pleas
Fourteenth Judicial Circuit

Chas, South Carolina.
at chambers

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

Courtney Sease, #328318

Applicant,

v.

State of South Carolina,

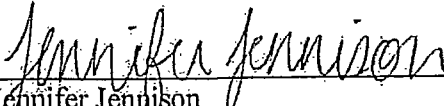
Respondent.

CERTIFICATE OF SERVICE

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

Tommy Arthur Thomas, Esquire
PO Box 88
Irmo, SC 29063

This 10th day of December, 2020.


Jennifer Jennison
Administrative Coordinator for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Courtney Sease, #328318,
Applicant,

FILED)

AM/PAA)

Case No.: 2019-CP-25-00341

v.

State of South Carolina,
Respondent.

JUL 27 2020
MOY
MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed by Courtney Sease (Applicant) on August 28, 2019. Respondent filed a return to this application, requesting that it be summarily dismissed. After a thorough review of all records and the motion to dismiss, this Court finds this action should be summarily dismissed for the reasons set forth below:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In April 2008, the Hampton County Grand Jury indicted Applicant for murder (2008-GS-25-0191) and possession of a weapon during the commission of a violent crime (2008-GS-25-0190). Robert M. Hughes, Esquire represented Applicant. Assistant Solicitors Randolph Murdaugh and Tameaka Legette, Esquires prosecuted the case. On May 5, 2008, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge, where he was convicted as indicted. Judge Buckner sentenced Applicant to imprisonment for thirty-five years for murder and for five years for possession of a weapon during the commission of a violent crime, to be served consecutively.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal based on Applicant's failure to provide documentation showing the transcript had

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been timely ordered and/or serve and file his initial appellate brief. The remittitur was issued on July 14, 2008.

First PCR Application: 2009-CP-25-00394

The Applicant subsequently filed an application for PCR on September 1, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Failed to disclose discovery evidence to Applicant;
 - b. Failed to make background checks of witnesses for convictions or mental and physical tests;
 - c. Failed to determine if witnesses were psychotic, retarded or drug users;
 - d. Failed to use written statements at trial;
 - e. Failed to object to testimony of witnesses not listed in discovery;
 - f. Failed to object to prosecutorial misconduct;
 - g. Failed to inform Applicant of the statutory right to examine jurors during voir dire; and
2. Ineffective assistance of appellate counsel in that counsel failed to properly perfect Applicant's appeal. Applicant did not knowingly and voluntarily waive his appellate rights.

Respondent filed its return on March 2, 2010. An evidentiary hearing into the matter was convened on August 31, 2011, at the Beaufort County Courthouse before the Honorable D. Craig Brown. Applicant was present at the hearing and was represented by Gerald A. Kelly, Esquire. Judge Brown found Applicant did not waive his right to appellate review and granted him belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 263 S.E.2d 35 (1974), but denied and dismissed all other allegations with prejudice by written order.

Applicant appealed Judge Brown's order and the South Carolina Supreme Court affirmed his conviction and denial of post-conviction relief. Sease v. State, Op. No. 2013-MO-025 (S.C. S.Ct. filed Sept. 11, 2013). The Remittitur was issued on September 17, 2013.

Second PCR Application: 2013-CP-25-00322

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Thereafter, Applicant filed his second PCR application on October 8, 2013, in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel:
 - a. Trial counsel was ineffective for not making a request to the trial judge concerning the jury instructions on the lesser included offense of manslaughter when evidence was presented that would warrant that instruction to be charged;
 - b. Trial counsel was ineffective for failing to object to the trial judge's jury instruction on inferred malice from the use of a deadly weapon where evidence was presented that would reduce, mitigate, excuse and justify the homicide;
 - c. Trial counsel was ineffective for not requesting a Neil v. Biggers hearing at pre-trial that would have determined the reliability of the eyewitnesses identification testimonies in light of the factors set forth in the above case which would hinder mistaken identifications;
 - d. For failing to inform applicant of the statutory right to examine jurors during voir dire; and
 - e. For failing to object to testimony of witnesses not listed in discovery materials.

Respondent made its return and motion to dismiss on October 24, 2014, alleging the action should be summarily dismissed as successive to his prior PCR action and barred by the statute of limitations. On November 7, 2014, the Honorable Carmen T. Mullen, acting in her capacity as Chief Administrative Judge for the Fourteenth Judicial Circuit, issued a conditional order of dismissal provisionally denying and dismissing the application. On November 19, 2014, Applicant filed a document entitled "Applicant's Response to Court's Conditional Order of Dismissal." On August 13, 2015, Judge Mullen issued the final order of dismissal denying and dismissing the application with prejudice.

Applicant filed a timely notice of appeal. On September 28, 2015, the South Carolina Supreme Court dismissed the appeal because Applicant failed to show there was an arguable basis for asserting that the determination by the lower court was improper as required by Rule 243(c) of the South Carolina Appellate Court Rules. The remittitur was issued on October 14, 2015.

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CURRENT ACTION BEFORE THE COURT

In his third and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Newly-Discovered Evidence

- a. Applicant's mother and sister informed Applicant in March, 2019, that two members of the jury gave the thumbs up symbol to Victim's family shortly after being found guilty on both charges.

In response to this application, Respondent filed a return and motion to dismiss, seeking summary dismissal of the action for failure to satisfy the requirements for newly discovered evidence or juror misconduct. Attached to the return and incorporated by reference were the records of the Hampton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the records from Applicant's prior post-conviction relief actions, and the current application. This Court had reviewed these records, along with the return and motion to dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds this application should be summarily dismissed as barred by the statute of limitations as set forth in the Uniform Post-Conviction Procedure Act. In this third application for post-conviction relief filed over a decade after his conviction, Applicant alleges he is being held in custody unlawfully as a result of newly-discovered evidence based on his "discovery" that his mother and sister witnessed jurors give the victim's family a "thumbs up" gesture during his trial. In support of this claim, Applicant attached his own affidavit and an affidavit from his mother.



Respondent moved for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. After reviewing the attached affidavits and the record before this Court, this Court grants Respondent's motion to dismiss because there is no question of law or fact to necessitate a hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal for the following reasons:

Applicant argues he is entitled to a new trial based on newly discovered evidence based on purportedly improper actions of the jurors. While Applicant frames his claim as newly discovered evidence, it is more accurately classified as an allegation of juror misconduct. Juror misconduct discovered post-trial is not properly considered "newly discovered evidence"; rather, it is a separate basis for a new trial. McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013). For a new trial to be warranted based on juror misconduct, it must be shown that 1) the juror intentionally concealed information; and 2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Id. (citing State v. Woods, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001)) (emphasis added).

Applicant offers as evidence two affidavits, one from himself and one from his mother, in which his mother claims to have witnessed two jurors giving a thumbs up symbol to the victim's family shortly after Applicant was found guilty on both of his charges. Assuming the facts are true and viewed in the light most favorable to the Applicant, this Court finds Applicant has not

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satisfied the standard set by McCoy. The mere signaling of a juror to the victim's family after the verdict had already been delivered in no way shows the juror concealed information that would have created bias against the Applicant. Furthermore, the evidence offered does not show a material fact that would have led to the use of a peremptory challenge by the Applicant during voir dire.

Moreover, this Court finds this allegation is not timely raised. The Uniform Post-Conviction Relief Act states that a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been discovered through exercising reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence post-conviction must show the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Here, Applicant cannot establish his claim meets the requirements of newly discovered evidence. Because of the close familial relationship between Applicant and the Affiant—his mother—Applicant could have and should have discovered this information with the exercise of



reasonable diligence. Moreover, he cannot establish this purported "evidence" would have change the result of his trial or that it is material to guilt or innocence.

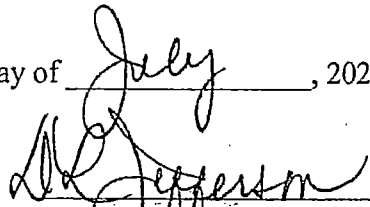
Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This Court finds Applicant has failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this Court finds this matter must be summarily dismissed with prejudice.


CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Hampton County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 14th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 22nd day of July, 2020.


DEADRA L. JEFFERSON
Chief Administrative Judge
Fourteenth Judicial Circuit

 Charleston, South Carolina
at chambers

