

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Robert Lee, Jr., #348833

) Case No.: 2020-CP-42-01334
)

Applicant,

) **FINAL ORDER OF DISMISSAL**
)

v.

State of South Carolina,

Respondent.

FILED
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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Robert Lee, Jr. on April 21, 2020. Respondent moved to summarily dismiss the application on October 27, 2020, for untimeliness, successiveness, and for failure to establish a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated November 9, 2020, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not be finalized. Applicant was personally served with this conditional order of dismissal on November 23, 2020, as evidenced by the attached affidavit of personal service.

On December 4, 2020, Applicant filed his reply to the conditional order of dismissal. In his reply, he reiterated his claims concerning the missing Great Seal and again argues that this, by itself, entitles him to relief. Applicant claims he is entitled to a hearing because the missing Great Seal renders the law he was convicted under unconstitutional. He also argues the argument cannot be dismissed as untimely and successive because he did not discover the Great Seal was missing until within a year of filing this PCR application.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not adequately shown why he is entitled to relief based upon newly discovered evidence. Though Applicant reiterates his recent discovery of the missing Great Seal, this does not entitle him to the relief sought. Applicant's discovery does not constitute newly discovered evidence, because this evidence remained discoverable through exercising reasonable diligence and subsequently raised in Applicant in prior action. Accordingly, this Court finds Applicant has not overcome his procedural hurdle in establishing why the conditional order of dismissal should not take effect.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on December 1, 2011, and the remittitur from his direct appeal issued on May 2, 2014. Thus, his PCR applicant was due on May 3, 2015. The current application was not filed until April 21, 2020. Applicant has failed to sufficiently explain the nearly six year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this 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). Applicant has failed to make such a showing based on the information set forth in his responses,

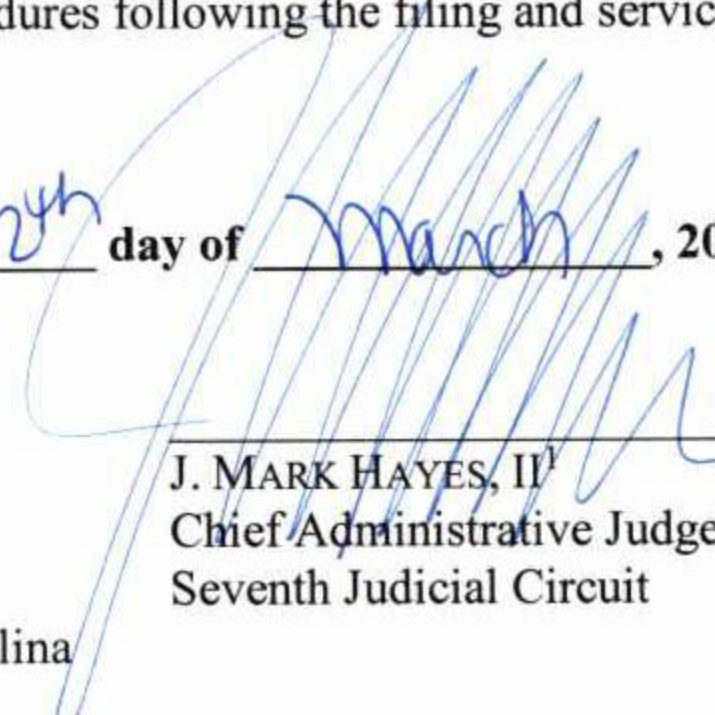
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A.M. W. COX

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and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed for untimeliness, successiveness, and for failure to establish a *prima facie* case of newly discovered evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice. This court hereby advises Applicant that he must file and serve a notice of appeal within thirty 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 12th day of March, 2021.


J. MARK HAYES, II¹
Chief Administrative Judge
Seventh Judicial Circuit

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SPARTANBURG COUNTY
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Spartanburg, South Carolina

¹ Judge J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he presided over Applicant's trial proceedings, the proposed final order of dismissal are being sent to the Honorable J. Mark Hayes, II, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.



ALAN WILSON
ATTORNEY GENERAL

March 10, 2021

The Honorable J. Mark Hayes, II
Seventh Judicial Circuit Court Judge
180 Magnolia Street
Spartanburg, SC 29306

Re: Robert Lee, Jr., #348833 v. State of South Carolina
2020-CP-42-01334

Dear Judge Hayes:

Enclosed please find the proposed Final Order of Dismissal in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the Spartanburg County Clerk of Court for filing.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/jaj
Enclosure(s)

cc: Robert Lee, Jr., #348833

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Logan Starke (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

AFFIDAVIT OF PERSONAL SERVICE

On this 23 day of November 2020, I served the Conditional Order of Dismissal, on Inmate Robert Lee, Jr. SCDC Inmate #348833, by delivering personally and leaving a copy of the same at Lee Correctional Institution. Deponent is not a party to this action.

s/ Logan Starke
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 23 day of November 2020

Tamara Conwell (L.S.)
Notary Public for South Carolina

My Commission Expires: September 25, 2023

RECEIVED
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PCI MAILROOM

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Perry Correctional Institution), Greenville County, SC this 23 day of November, 2020.

s/ Robert Lee
Inmate
SCDC Inmate #: 348833

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