

Hon. Danile E. Shearouse
Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

Marco Bates #249552-AB-47
LCI/P.O. Box 205
Ridgeville, SC 29472

April 28, 2021

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MAY 04 2021

S.C. SUPREME COURT

Re: 2020-CP-42-03417

Dear Hon. Danile E. Shearouse:

Enclosed is a True Copy of Notice of Appeal along
with a Affidavit of Service requesting a stamped clock-dated copy.

Respectfully Submitted,

St Marco Bates
Marco Bates

State of South Carolina
in the Supreme Court

Marco Bates #249552,
Petitioner,

v.

State of South Carolina,
Respondent.

Appeal from Spartanburg County
Court of Common Pleas the
Hon. Grace G. Kwie

Case No. 2020-CP-42-03417

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S.C. SUPREME COURT

Notice of Appeal

The Petitioner, Marco Bates #249552, appeal the Hon. Grace G. Kwie Final Order of Dismissal April 13, 2021, order denying Post-Conviction Relief Hearing. Petitioner received Notice of Final order of Dismissal April 16, 2021. A copy of the order on appeal is attached to this Notice.

Date 4-28-21

Respectfully Submitted,

s/ Marco Bates
Marco Bates

State of South Carolina
in the Supreme Court

Marco Bates #249552,
Petitioner,

v.

State of South Carolina,
Respondent.

Appeal from Spartanburg County
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Hon. Grace G. Kwie

Case No. 2020-CP-42-03417

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S.C. SUPREME COURT

Affidavit of Service

I, Marco Bates #249552, certify that a True copy of
Notice of Appeal has been placed in the United States mail to all
parties listed below.

1). South Carolina Supreme Court Clerk
Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211

2). Chelsey F. Marto, AAG
S.C. Attorney General's office
P.O. Box 11549
Columbia, SC 29201

Respectfully Submitted

St. Marco Bates #249552

Marco Bates #249552-AB-47
LCI / P.O. Box 205
Ridgeville, SC 29472

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. However, the evidence, consisting of an omission from clerks records from the trial proceedings, is not newly discovered evidence. This evidence could have been discovered prior to trial through exercising reasonable diligence when his attorney failed to call the expert requested to the stand. Additionally, Applicant has made no showing what an expert would have revealed, why it was needed, or how it would be material at trial. Further, the fact that Counsel did not request funding for an expert itself does not impact trial results whatsoever. Instead, at its base, this is an ineffective assistance of counsel claim hedged as a newly discovered evidence claim as an attempt to side step the filing deadlines imposed upon him. This cannot stand. Accordingly, this Court finds the application shall remain dismissed for failure to establish a *prima facie* case of newly discovered evidence.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on May 8, 1998, and the remittitur from his direct appeal issued on January 10, 2001. Thus, his PCR application was due on January 11, 2002. The current application was not filed until July 21, 2020. Applicant has failed to sufficiently explain the over nineteen 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.

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 response,

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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 and 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 _____ day of _____, 2021.

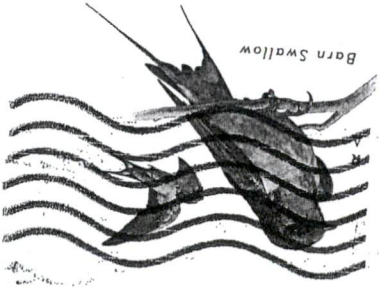
R. D. Cole

GRACE GILCHRIST KNIE¹
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
JAN 14 2021
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¹ The Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit and the Honorable J. Mark Hayes, II, is currently the Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit. However, because they oversaw Applicant's prior proceedings, the proposed final order of dismissal is being sent to the Honorable Grace Gilchrist Knie, Seventh Judicial Circuit Court Judge.



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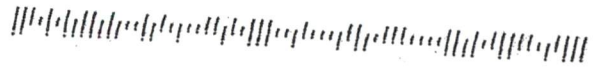
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S.C. SUPREME COURT

Hon. Davie E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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P.O. Box 205
Ridgeville, SC 29472



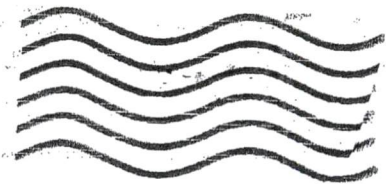
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THE DEPARTMENT OF CORRECTIONS HAS NOT INSPECTED OR CENSORED THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR ITS CONTENTS. LIEBER CORRECTIONAL INSTITUTION SC DEPARTMENT OF CORRECTIONS