

attorney to submit a 59(e) motion. He claims that the failure to timely serve the order deprived him of his "one bite at the apple." He also claims that his inability to file a 59(e) disallowed him from raising this issue on appeal. He states that each successive application has been unduly thwarted by the State because the State was the reason for the issues in his initial application. He also claims his current claims are brought under "new law" and, even if they sound similar to past claims, they are "very different from what the applicant has been arguing previously." He claims that because of this new law, the application is timely if filed within a year of the new law's passing. He states that the new laws are *Goss v. State*, *McCoy v. Louisiana*, and *Rodriguez v. Penton v. United States*, all of which were decided within a year of filing the application. Applicant claims he is entitled to default judgment because the State did not timely file their return.

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.

As a preliminary matter, the Court denies Applicant's motion seeking summary dismissal. The grant of post-conviction relief due to the State's failure to reply or lateness of reply is not appropriate. *See* Rule 55(e), SCRPC ("No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof unless the claimant establishes his claim to relief by evidence satisfactory to the Court[.]"). A colorable claim for relief must be supported by evidence and testimony on the record and a meritless application cannot be saved by inaction by the State. Accordingly, the Court denies Applicant's motion for default judgment.

Applicant had a full opportunity to litigate all his allegations in his prior actions. In fact, Applicant raised ineffective assistance of counsel claims in all prior action, including claims

about alleged ineffectiveness for failing to assess and raise mental health concerns, concerns about plea bargaining, and claims concerning witnesses and witness testimony and credibility; claims he now seeks to raise again. The fact that he now seeks to re-litigate these claims under the guise of “new law” is of no consequence. The finality of the previous Court rulings should be respected, and the application shall remain summarily dismissed as barred by the doctrine of *res judicata*.

Additionally, this Court finds that the application is barred for untimeliness. Applicant pled guilty to all charges on February 1, 2006 and the remittitur from the direct appeal was issued on April 24, 2008. The application was therefore due on April 25, 2009. This application was filed on May 7, 2019, well beyond the statutory filing period. 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.

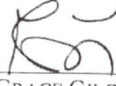
Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, consequently, 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 as barred by the doctrine of *res judicata*. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

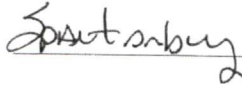
IT IS THEREFORE ORDERED that, for the reasons in this Court’s conditional order

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 5th day of May, 2021.


GRACE GILCHRIST KNIE¹
Chief Administrative Judge
Seventh Judicial Circuit


_____, South Carolina

FILED
2021 MAY -5 PM 2:34
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA

¹ The Honorable J. Mark Hayes is currently the Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit and the Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit. However, because they presided over Applicant's prior PCR actions, the proposed final order of dismissal are being sent to the Honorable Grace Gilchrist Knie, Seventh Judicial Circuit Court Judge.

BRC1



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

MAR 31 2021

GENERAL COUNSEL

March 29, 2021

Barton J. Vincent, General Counsel
Attn: Jonathan Eckstrom
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221-1787

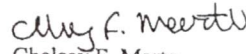
Re: Tyrone B. Perry, #307793 v. State of South Carolina
2019-CP-42-01661

Dear Mr. Eckstrom:

Enclosed please find the **Conditional Order of Dismissal** in the above-captioned inmate's post-conviction relief action. Please serve the inmate, **Tyrone B. Perry, #307793** with the order and provide me with an affidavit of service (enclosed).

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,


Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosures

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 W. H. Down (*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 Richland) AFFIDAVIT OF PERSONAL SERVICE

On this 7th day of April, 2021, I served the Conditional Order of Dismissal, on Inmate Tyrone B. Perry SCDC Inmate #307793, by delivering personally and leaving a copy of the same at Broad River Correctional Institution. Deponent is not a party to this action.

s/ W. H. Down
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 7th day of April, 2021

Lisa Brown-Alston (L.S.)
Notary Public for South Carolina

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Broad River Correctional Institution), Richland County, SC this 7th day of April, 2021.

s/ Tyrone Perry
Inmate
SCDC Inmate #: 307793

2019-CP-42-01661

FILED
MAY 15 PM 2:34
CLERK OF COURT
RICHLAND COUNTY
COLUMBIA, SC