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LANCASTER, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) FOR THE SIXTH JUDICIAL CIRCUIT

Charles H. Davis, #299511) Case No.: 2020-CP-29-1195

Applicant)

v.) **FINAL ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Charles H. Davis on September 14, 2020. Respondent made its Return and Motion to Dismiss on February 18, 2021, requesting the application be summarily dismissed as untimely, successive to Applicant's prior PCR action, barred by the doctrine of *res judicata*, and for failure to make a *prima facie* case of newly discovered evidence.

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 filed May 13, 2021, provisionally denying and dismissing this action, while giving 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 an Affidavit of Service dated June 3, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed response on June 8, 2021 titled "Objection to Conditional Order of Dismissal." In his response, Applicant argues:

1. After Discovered Evidence/New evidence.
   A. Victim I. (Applicant's Girlfriend), and Victim II. (Mr. Caskey), has since the trial in Applicant's absence, has changed their stories of the events of that night. Victim I. Now ststes that the Applicant had a key to her apartment that she freely gave him and he had her permission to come and go from her

apartment and that Applicant did not break into her home the night of the incident. (Statement from victim I. confirming new testimony)

B. Victim II. states he that he was not aware that Ms. Colbert, (victim I.) was still involved with the Applicant. Also that it was Ms. Colbert and not him that called the police on the Applicant and that if he had known that the applicant had in fact had his own key to the apartment, he would not of been there. He concludes to state that he does not feel that the applicant should be charged with the burglary of the ABHAN. Also that no one used any force or threats to get him to give this true accounting.

Applicant reasserts nearly identical arguments made in his application for PCR in this case. An applicant requesting a new trial based on after-discovered evidence following a conviction must show that 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)).

While slightly different, Applicant's arguments are essentially identical to those previously asserted, and therefore, Applicant has failed to show a sufficient reason as to why the Conditional Order of Dismissal should not become final. Specifically, the issue of Applicant having a key to his ex-girlfriend's apartment was admitted by Ms. Colbert at trial on two separate occasions:

Q. Did y'all live together?
A. No, sir.
Q. He had a key to your apartment?
A. Yes, sir, to the back door.
Q. Do you remember when you spoke to law enforcement that night, the night that this happened, do you remember talking to law enforcement?
A. Uh-huh.
Q. Do you remember telling them that he did not have a key?
A. No, sir.

(R. at 38).

Q. Well okay. You saw him on a regular basis?
A. Yes, sir.
Q. You gave him a key to your apartment?
A. Yes, sir.

(R. at 42).

Applicant's possession of the key was additionally included in the record by Applicant's counsel in his motion for a directed verdict at the conclusion of the State's case. Applicant's counsel noted during his motion that Ms. Colbert testified Applicant had a key to the apartment. (R. at 74). Accordingly, this information does not constitute newly discovered evidence when it was well documented and uncontested in the record.

Further, Applicant's assertion that the victim states he would not have been present had he known Applicant was free to be in Ms. Colbert's apartment, and that the victim does not believe Applicant should have been charged, has no bearing on Applicant's guilt as found by the Court. Claims by an Applicant that he or she is actually innocent, is not guilty, or that the evidence against him or her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); *Dickson v. State*, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966) ("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus.").

Applicant's discovery of the victim's current opinion of events does not constitute newly discovered evidence. This information was discoverable prior to Applicant's trial in absentia, and is not material to the issue of his guilt or innocence regarding the subject convictions. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled

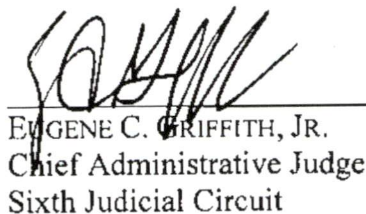
to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter.

In conclusion, this Court has reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal and the additional reasons set forth in this Final Order of Dismissal, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant 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 29th day of June, 2021.



EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Sixth Judicial Circuit

Newberry, South Carolina