

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Patrick Bryant, SCDC No. 215212

Applicant,

v.

State of South Carolina

Petitioner.

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

) Case No. 2021-CP-22-00002

) FINAL ORDER OF DISMISSAL

ASHIA T. WHITE  
CLERK OF COURT

2021 JUN 29 PM 12:07

FIFTEENTH  
JUDICIAL CIRCUIT

This matter comes before the Court by way of an application for post-conviction relief filed January 4, 2021. Respondent made its return on or about April 13, 2021 and requested that the application be summarily dismissed for failure to establish 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 signed on April 14, 2021 and filed on April 23, 2021. This order provisionally denied and dismissed the action, while also allowing Applicant twenty days from the date of service of the order upon him to show why the dismissal should not become final. Attached to this final order of dismissal and incorporated herein by reference is an affidavit showing that Applicant was served with the conditional order on May 14, 2021.

Applicant filed his response on May 3, 2021, prior to formal service of the signed conditional order. 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.

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Applicant's asserts in his response that he is being held in custody unlawfully because his counsel failed to convey a plea offer prior to trial. He claims that he did not discover this until October 19, 2020. Applicant claims that no offer was presented to him when he appeared for a DNA swab, as indicated in the letter, the trial transcript, and the PCR transcript. He claims that he was never present at the DNA hearing and that "records will show" that he was not present.

This Court finds that Applicant has not met the burden imposed upon him of establishing a *prima facie* case of newly discovered evidence and therefore is not entitled to appointed counsel or an evidentiary hearing. His claim that "records will show" that he was not present at the DNA hearing where the State asserts the offer was conveyed and rejected is insufficient because, despite bearing the burden of proof, he has produced no such records. Furthermore, his assertion is refuted by the letter he relies upon, the trial transcript, and the PCR transcript. Applicant's response also does not dispute the State's assertion that he was present at his November, 2010 PCR hearing and must have heard his trial counsel testify about the plea offer at that time. Because Applicant undisputedly became, or should have become, aware of the plea offer in 2010, his claim of newly discovered evidence is untimely under S.C. Code Ann. §17-27-45(C) and must be dismissed. Furthermore, his claim of newly discovered evidence is not such that would probably change the result of a new trial and is not material to his innocence or guilt because the record shows that that he knowingly rejected the plea offer. Therefore, the application for post-conviction relief shall be dismissed with prejudice.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, as supplemented by the findings above, the Application for post-conviction relief is hereby DENIED AND DISMISSED WITH PREJUDICE.

This Court hereby advises the Applicant that he must file and serve a notice of appeal within 30 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 10<sup>th</sup> day of June, 2021.

Benjamin H. Culbertson  
Benjamin H. Culbertson  
Chief Administrative Judge  
Fifteenth Judicial Circuit

Georgetown, South Carolina