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Anderson, SC CDC, CP/69

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT

Billy S. Tucker, SCDC #314351,  
Petitioner,

Case No. 2021-CP-04-0652

v.

ORDER DENYING PETITIONER'S  
MOTION TO RECONSIDER  
PURSUANT TO RULE 59(E), SCRPC

State of South Carolina,  
Respondent.

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SEP 22 2021

**SC Court of Appeals**

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SEP - 7 2021  
*Richard M. Kintley*

This matter comes before the Court by way of a petition for writ of habeas corpus filed by Billy S. Tucker (Petitioner) on April 7, 2021. The State made its return on July 15, 2021, requesting the action be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued an Order of Dismissal signed and filed July 22, 2021, denying and dismissing this action with prejudice pursuant to Rules 12(b)(1), 12(b)(6), 12(c), and 56 of the South Carolina Rules of Civil Procedure; sections 17-27-20, -45, -70, and -90 of the South Carolina Code; and article V, section 5 of the South Carolina Constitution.

On August 11, 2021, Petitioner filed a motion to reconsider the Order of Dismissal. The State made its return to Petitioner's motion on August 23, 2021. Based on the following, this Court denies Petitioner's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC:

1. Specifically, Petitioner complains about his petition being dismissed without a hearing, as he alleges "the tradition of the writ of habeas corpus requires." He contends this Court must assume a genuine issue of material facts exist merely because he says so.

2. As an initial matter, this Court noted in its Order that a “habeas corpus petition must support the requested relief.” *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998). Although the allegations in the petition are to be treated as true, the petitioner must make a *prima facie* case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. *Id.* at 40, 495 S.E.2d at 427–28.
3. This Court reasserts its finding in the Order of Dismissal that Petitioner failed to meet the standards required for the issuance of this extraordinary writ. He further failed to provide any reason why other remedies, such as PCR, were unavailable or inadequate to address his allegations. *See* S.C. Code Ann. § 17–27–20(B) (The PCR Act expressly “takes the place of all other common law, statutory or other remedies [formerly] available for challenging the validity of the conviction or sentence” and “shall be used exclusively in place of them.”). There is nothing extraordinary about the claims raised in the habeas petition—they are, in fact, identical to the claims raised in Petitioner’s previous PCR action. He therefore cannot show that these issues could not have been raised previously.
4. Additionally, notwithstanding the fact that his petition is procedurally barred, this Court addressed the issues raised in the petition and found them to be meritless. As Judge Childs noted in her order dismissing Petitioner’s petition for habeas corpus in federal court, the South Carolina Supreme Court has repeatedly emphasized that “the circuit courts retain subject matter jurisdiction over criminal matters regardless of the term of court.” *Tucker v. Warden, McCormick Corr. Inst.*, No. 0:15-CV-04218-JMC, 2016 WL 4771285, at \*6 (D.S.C. Sept. 14, 2016) (citing *State v. Campbell*, 376 S.C.

212, 216, 656 S.E.2d 371, 373 (2008)). Petitioner was indicted in Anderson County for a crime committed in Anderson County. He was then tried and convicted in Anderson County. As such, the case was properly before the Anderson County Circuit Court.

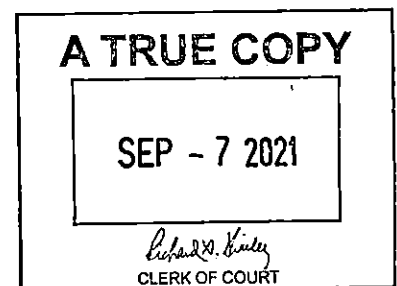
This Court finds Petitioner failed to present any sufficient reason why this Court should alter, amend, or reconsider its findings of facts and conclusions of law set forth in the Order of Dismissal. Petitioner has further failed to show he is entitled to a hearing in this matter. **IT IS THEREFORE ORDERED** that Petitioner's motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRPC, is **DENIED**.

AND IT IS SO ORDERED this 7 day of September, 2021.



J. CORDELL MADDOX, JR.  
Chief Administrative Judge  
Tenth Judicial Circuit

Anderson, South Carolina

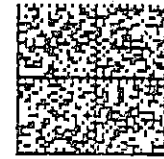


**Richard A. Shirley**  
Clerk of Court  
P.O. Box 8002  
Anderson, SC 29622

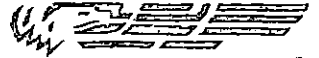
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Billy S. Tucker #314351  
Tyger River Correctional Inst.  
U4-103 Prison Rd.  
Enoree, SC 29335

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