

PCR

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-8589

Larry Edward Hendricks, 254256,

Appellant,

v.

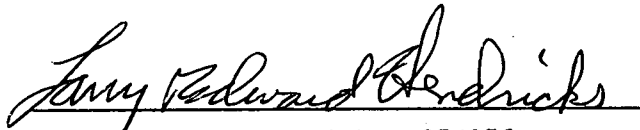
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Larry Edward Hendricks, proceeding pro-se, appeals the orders of the Honorable L. Casey Manning dated February 11, 2013, and March 11, 2013. Appellant received the latter written notice of entry on March 18, 2013.

April 15, 2013



Larry Edward Hendricks, 254256

RCI, PO Box 2039, GB-13

Ridgeland, SC 29936-2039

Appellant, Pro-se

Other Counsel of Record:

Robert D. Corney

Senior Asst. Attorney General

PO Box 11549

Columbia, SC 29211-1549

RECEIVED

APR 18 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

APPEAL FROM THE COURT OF COMMON PLEAS

Columbia, SC

L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-8589

Larry Edward Hendricks, 254256,

Petitioner,

v.

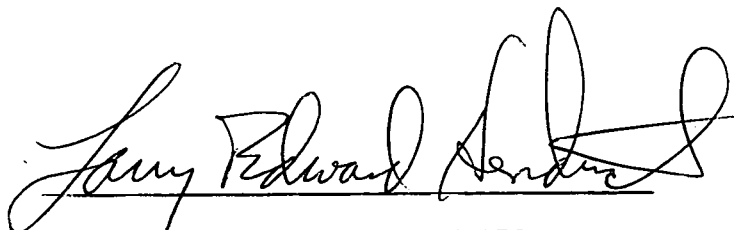
State of South Carolina,

Respondent.

PROOF OF SERVICE

The Petitioner, Larry Edward Hendricks, 254256, proceeding pro-se, certify that I have served the attached: NOTICE OF APPEAL; on the Respondent by depositing a copy of the same with the Institution's Mailroom for delivery via the U.S. Postal Service, addressed to: Robert D. Corney, Asst. Attorney General, PO Box 11549, Columbia, SC 29211-1549; and the Clerk of Court for Richland County, PO Box 2766, Columbia, SC 29202-2766.

This 15th day of April, 2013.



Larry Edward Hendricks, 254256
Petitioner, Pro-se

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Larry E. Hendricks, #254256,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-08589

FINAL ORDER

RICHLAND COUNTY
 FILED
 2013 FEB 11 AM 10:51
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter comes before this Court by way of an application for post conviction relief (PCR) filed November 24, 2010, and amended October 4, 2011. The Respondent made its Return and Motion to Dismiss on November 2, 2011, requesting the application be summarily dismissed as untimely filed, successive in nature, and for failing to state a claim entitling him to relief. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Alison Renee Lee issued a Condition Order of Dismissal on March 20, 2012, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of said Order in which to show why the dismissal should not become final.¹

Incorporated herein is the affidavit of service dated April 11, 2012, confirming service of the above-mentioned Conditional Order upon Applicant at the South Carolina Department of Corrections:

¹ A Conditional Order of Dismissal was also entered by the Honorable James R. Barber, III, in his capacity as then Chief Administrative Judge for Common Pleas in the 5th Circuit. Because Judge Lee's order was entered first, Judge Barber rescinded his Conditional Order by Form 4 order on April 10, 2010, deferring to Judge Lee's March 20, 2012, order.

S.M.R.C.
✓

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated OFF A. HARRIS (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

Larry E. Hendricks

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF)

On this 11 day of APRIL, 2012, I served the signed Conditional Order of Dismissal on ~~Inmate~~ Larry E. Hendricks SCDC Inmate No. 254256 by delivering personally and leaving a copy of the same at RIDGELAND Correctional Institution, RIDGELAND, South Carolina. Deponent is not a party to this action.

s/ A. Harris

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 11 day of April, 2012
Vivian Robinson (L.S.)

Notary Public for South Carolina

My Commission Expires: May 20, 2021

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, RIDGELAND Correctional Institution, RIDGELAND, WSPR County, South Carolina, this 11 day of APRIL, 2012.

Larry E. Hendricks

Inmate Signature
SCDC No. 254256

List case number here:

2010-CP-40-08589

Applicant responded to Respondent's Motion to Dismiss and/or the Court's Conditional Order by way of numerous *pro se* filings.² The first document was entitled "Notice of Motion for Summary for Summary Judgment and Brief in Support Thereof", filed May 9, 2011. In it, Applicant set forth the following:

As declared in the referenced application, the substantive standard not previously recognized is from the U.S. Supreme Court's decision which declared the advise and direction, afforded the Applicant, before his plea, constituted denial of fundamental fairness, shocking to universal sense of justice. Padilla v. Kentucky, 130 S.Ct. 1473, 1486 (2010)(regarding "Affirmative Misadvice," of counsel, constituting deficient performance, that is constitutionally deficient,). This is clearly explained in the forementioned Application.

The Supreme Court further declared, "A Defendant in such a proceeding is entitled to the full panoply of the relevant protections which due process guarantees in state criminal proceedings. He must be afforded all those safe guards which are fundamental rights and essential to a fair trial. ..." Specht v. Patterson, 386 U.S. at 606-609, 87 S.Ct. 1209 (1967).

The argument of "Mis-Advise of Counsel" is clearly a part of the record, but not recognized in previous proceedings. The Record has the defense counsel admitting that he misadvised the Applicant, whereas counsel, as in Padillia, should have been well enough versed, not to. Because the Record is clear, this would be credible evidence, as it is detailed in the Affidavit of Undisputed Fact, that the doctrine of Judicial Estoppel would prevent the Respondent's to now refute. Wright v. Craft, 640 SE2d 486 (Ct. App. 2006): State v. McCall, 612 SE2d 453 (Ct. App. 2005).

² None of the portions of Applicant's *pro se* letters set forth herein are meant to take the place of the entirety of Applicant's responses. This Court, after reviewing each the responses *in their entirety*, selected the pertinent portions for specific inclusion herein. However, this Court has considered the entirety of Applicant's responses in reaching the conclusions set forth in this Order.

As such the requirements espoused by the Justices in Padilla, and the fact that no more expert testimony could be needed mustered, when the mis-advice of counsel is espoused by counsel himself in the Record. This means that Applicant was denied Constitutional Due Process at a crucial stage. This precedent did not exist at the time of the Applicant's conviction, but must be applied retroactively on collateral review. Talley, supra.; Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 1070 (1989).

The next was a document filed August 15, 2011, entitled "Motion". Attached thereto was a copy of the above mentioned "Notice of Motion for Summary Judgment and Brief in Support Thereof". In the "Motion", Applicant set forth the following:

The Applicant submits that his allegations warrant the relief he seeks, that of a new trial. The Applicant is informed and believes that he is required to establish his claim to relief to the satisfaction of the Court. See: Rule 56(e), S.C. Rules Civ. Proc. The Applicant submits that he has the right to be heard on that issue, and said right to be heard on that issue prior to any further hearing in the Application warrants this motion to be deemed a "priority matter" as it is dispositive in nature. See: Rule 40, S.C. Rules Civ. Proc.

Applicant next submitted an "Amended PCR Application" dated September 2, 2011, in which he set forth the following additional allegations:

3. The above establishes that the word "possesses material," is in the plural form. As such consecutive sentences would not be warranted for more than one possessed item.

5. Based on the Doctrine of Precedent it is clear that the statute §16-15-410 must be looked at in conjunction to §16-15-375(2), and as such, it is clear that the intent is to look at all material, as one.

Because the Applicant has alleged mis-advice of counsel pursuant to recent U.S. Supreme Court precedent in Padilla v. Kentucky, 130 S.Ct. 1473 (2010), the answering of this question is a precursor to allegation alleged in the original application, and thus not successive. Aice v. State, 409 SE2d 392 (SC 1991). The Applicant's allegations must be deemed true until, conclusively refuted. Blandshaw v. State, 140 SE2d 784 (SC 1965).

BASED ON THE ABOVE, the Applicant submits that the continuous use of the plural word form throughout the defining Statute had not been adhered to, and as such clarity is needed to establish whether the Respondent is utilizing what is declared in the statute to inflict punishment. The Applicant has a State-Created liberty interest in the statute being followed. Wilkinson v. Austin, 125 S.Ct. 2436 (2005); Al-Shabazz v. State, 527 SE2d 742 (SC 2000). S.C. Constitution, Article V, §9, establishes the Supremacy of Precedent brought from the U.S., and S.C., Supreme Court. That would mean that the precedents provided, are controlling in the issue raised.

Thereafter, Applicant submitted a *pro se* document entitled "Applicant's Objection to Respondent's Motion to Dismiss", dated November 18, 2011. In it, he set forth the following:

The Respondent wishes this Honorable Court to ignore the fact that all of the documents clearly show, on their face, that the Applicant is proceeding pursuant to S.C. Code §17-27-45(B). The facts as described in the above noted documents clearly show transcript page numbers and lines, to justify the Applicant's claim based on Padilla v. Kentucky, 130 S.Ct. 1473 (2010)(regarding "Affirmative Misadvice," of counsel, constituting deficient performance, that is constitutionally deficient,").

The question of timeliness, as it relates to a statute of limitation, is erroneously applied, based on the statute that the Applicant filed under. The successive application issue is also misplaced, based on the statute and the precedent established by this State's Supreme Court in Talley v. State, 640 SE2d 876 (SC 2007).

As far as why the new ground was not raised previously, it was clearly^{Ad} acknowledged by the Supreme Court. In essence it was brought forth in Padilla, that mis-advice of counsel in a critical stage is now a factor of ineffective assistance of counsel. This precedent had not been clearly defined previously, but the mis-advice during the negotiation of a plea is a critical phase of litigation for purposes of the Sixth Amendment necessitating the need for effective assistance of counsel. Id. at 1486.

Applicant next submitted a letter to Respondent dated November 30, 2011, in which he set forth the following:

Dear Mr. Petrano:

I hope that this letter finds you and yours in the best of health and in good spirits. On November 15, 2011, when I received your Return in the above referenced case, you also included the documents filed in regards to it. After the filing of my most recent Motions, I noticed that you failed to send a copy of the "Applicant's Amended PCR Application," of which I mailed to you and filed with the Court on September 2, 2011.

If you would, please check your records, and file a copy of that Amendment with the Court for its review, with the other pertinent matter, I would be most appreciative. I understand that it is just an oversight on the part of your legal assistant, but it is an important part of what I would like the Court to hear and further discuss.

I appreciate your time and assistance in this matter, and look forward to your positive response. Have a happy holiday season.

Applicant's next response was dated March 26, 2012, entitled "Objection to Conditional Order", in which he alleged, in pertinent part, the following:

With that in mind the Applicant incorporates his earlier filed Objection of November 22, 2011, and add to that the Proposed Conditional Order does not address the September 2, 2011, Amended PCR Application.

The Applicant admonished the State's attorney in a letter, November 30, 2011, regarding referencing the Amended Application in the Return, received November 15, 2011. No response was had. There was also no mention of the Default Judgment that had been filed after the initial application had been filed.

Thereafter, Applicant filed a document entitled, "Motion to Void Conditional Order",

dated April 18, 2012. In that motion, Applicant set forth the following:

NOW COMES, the Applicant, Larry Edward Hendricks, proceeding pro-se, who humbly asks this Court to Void the Conditional Order of March 16, 2012, signed by the Honorable Alison R. Lee, and personally served upon the Applicant on April 11, 2012. At the time of the signing of the Conditional Order Judge Lee lacked jurisdiction to entertain the Respondent's Proposed Condition Order Request.

South Carolina Constitution Article V, §4, specifically states, "the Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system." Cheap-O's Truck Stop, Inc. v. Cloyd, 567 SE2d 514 (Ct. App. 2002). The Supreme Court has its Court Administration and calendar and control the order of business to safeguard the rights of the litigants. Renaissance Enter. v. Summit Teleservices, 515 SE2d 257 (SC 1999). The Court Administration does not have Judge Lee listed this term as the Chief Administrative Judge for the Court of Common Pleas, nor is she scheduled to hear Post-Conviction Relief (PCR) matters this term, in the Fifth Judicial Circuit.

After conducting a thorough review of the entirety of the record, all relevant documents contained therein, and the entirety of the *pro se* packet submitted by Applicant, this Court finds no sufficient reason has been set forth why the Conditional Order should not become final, dismissing the current action with prejudice.

The majority of Applicant's responses and objections are centered around the claim that the United States Supreme Court's decision in Padilla v. Kentucky amounts to a sufficient new "substantive standard not previously recognized as a right", intended to be applied retroactively, to allow the current action to be brought under S.C. Code § 17-27-45(b). This Court disagrees with Applicant's contentions. In Padilla, the Court held because "virtually mandatory" deportation pursuant to federal immigration law is such a unique consequence, it is not appropriately classified as either a direct or collateral consequence. See Padilla at 1478; p. 1481-82. The Padilla court repeatedly emphasized the unique nature of the consequence of

deportation, and the opinion implies that a bright-line rule is appropriate in deportation cases only because the law of deportation has its roots in a comprehensive federal statutory scheme which is applicable nationwide. See id. at 1477-80; p. 1480 (“as a matter of federal law,” deportation is an “integral part” of a non-citizen’s penalty); p. 1482-83.). Therefore, the Court set forth a bright-line rule that defense counsel must inform a non-citizen guilty plea defendant regarding the risk of deportation. Id. Further, Padilla only abrogated the direct/collateral consequence dichotomy and the law regarding misadvice/erroneous plea advice as it pertains to federal deportation consequences. See e.g. Brown v. Goodwin, 2010 WL 1930574, slip op. at 13 (D.N.J. filed May 11, 2010) (pointing out that while Padilla’s implications for deportation cases are clear, the holding does not seem importable to cases involving collateral consequences other than deportation).

Applicant’s current application in no way raises issues related to deportation which is the distinct and extremely limited nature of the holding in Padilla. Rather, Applicant merely sets forth an argument that his guilty plea was entered involuntarily as a result of counsel’s alleged ineffective pretrial investigation and erroneous advice. Such a claim has long been recognized as a ground for post-conviction relief, well before the Court’s decision in Padilla v. Kentucky. See e.g. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001) (“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty but would have insisted on going to trial.”).³

³ This Court also notes the lack of any binding precedent to date indicating the holding in Padilla is to be applied retroactively, thereby satisfying the requirements of S.C. Code § 17-27-45(b). This is of little consequence to this Court’s holding at this time as it is clear Applicant’s contentions are wholly without merit.

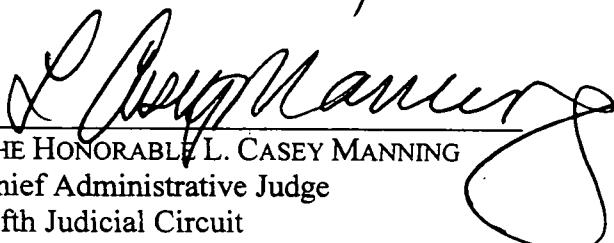
Additionally, this Court finds Applicant's contentions as set forth in his September 2, 2011, amended application are likewise appropriate for summary dismissal as they are untimely raised and fail to set forth a cognizable grounds for relief through PCR.

Accordingly, for the reasons set forth herein as well as those set forth in the Conditional Order, this Court must summarily dismiss the action with prejudice.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal as well as herein, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (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 7 day of February, 2013.


THE HONORABLE L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Larry E. Hendricks, #254256,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-08589

**ORDER DENYING RULE 59(e), SCRCPP
 MOTION TO ALTER OR AMEND**

RICHLAND COUNTY
 FILED
 2013 MAR 11
 AM 10:37
 JEANETTE M. MCBRIDE
 C.C.P. G.S.

This matter comes before this Court by way of Applicant’s *pro se* “Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCPP”, received by Respondent on March 1, 2013.¹

The current application form post-conviction relief (PCR) was filed with the Richland County Clerk of Court on November 24, 2010, and amended October 4, 2011. On November 2, 2011, Respondent made a Return and Motion to Dismiss requesting the matter be summarily dismissed with prejudice as it was untimely filed, impermissibly successive in nature, and failed to set forth a claim entitling Applicant to relief. Pursuant to this request, the Alison Renee Lee in her then capacity as Chief Administrative Judge for the Fifth Circuit Court of Common Pleas issued a Conditional Order on March 20, 2012, summarily dismissing the action while allowing Applicant time to submit his objections to the dismissal. After receiving numerous responses from Applicant, this Court issued a Final Order summarily dismissing the action with prejudice on February 11, 2013. The current motion follows.

First, this Court must deny and dismiss the current motion as Applicant has failed to timely file it in accordance with the proper timeline set forth in Rule 59(e), SCRCPP. Under the rule, a “motion to alter or amend the judgment shall be served not later than 10 days after receipt of written

¹ As of the date of this order, Applicant’s motion had not yet been filed by the Richland County Clerk of Court.
 HENDRICKS Larry #254256 – **ORDER DENYING RULE 59(e) MOTION** (2010CP4008589)



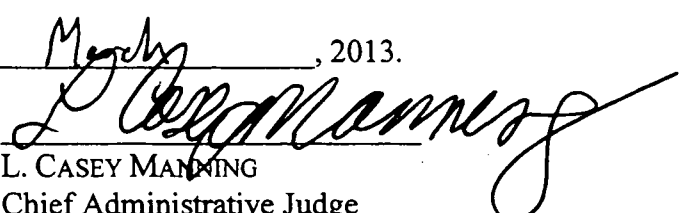
notice of entry of the order” dismissing the action. By Applicant’s own admission in the current motion, he received written notice of entry of the Final Order of Dismissal on February 15, 2013. The current motion, to date, has not been filed with the Richland County Clerk’s office, nor was it served on Respondent until March 1, 2013. Therefore, the current motion was untimely filed and must be dismissed.

Further, assuming *arguendo* the motion were properly filed, this Court finds the motion to be wholly without merit and fails to set forth a persuasive argument for the order to be altered or amended. Rather, this Court further finds the February 11, 2013, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate findings based upon the arguments made in Applicant’s pleadings.² Therefore, Applicant’s Rule 59(e), SCRPC, motion to alter or amend is denied. Further, this Court finds oral argument will not aid in reconsideration of the original judgment.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRPC, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 8 day of March, 2013.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

² Further, this Court notes that since the entry the February 11, 2013, Final Order, the United States Supreme Court has found Padilla v. Kentucky, 130 S.Ct. 1473 (2010), does not apply retroactively to cases being challenged through collateral attack, only further supporting this Court’s prior order of dismissal. See Chaidez v. U.S., No. 11-820 (February 20, 2013).

MR. LARRY E. HENDRICKS, 254256

RCI, PO BOX 2039, GB-13

RIDGELAND, SC 29936-2039

RIDGELAND CORRECTIONAL
INSTITUTION

APR 15 2013

MAILROOM

SUPREME COURT OF SOUTH CAROLINA

DANIEL SHEAROUSE, CLERK

PO BOX 11330

COLUMBIA, SC 29211-1330

LEGAL MAIL

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RIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

LEVERN COHEN, WARDEN
RIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.