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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

CASE NO. #2018-CP-40-0514

State of South Carolina Respondents,

vs.

Gary Anthony White, Jr. Appellant.

NOTICE OF APPEAL

Gary Anthony White, Jr. #309726, appeals the Order Denying Applicant's Motion Pursuant To Rule 59(e), SCRPC, of the Honorable L. Casey Manning, Circuit Court Judge, dated September 29, 2021. Appellant received a copy of entry of this Order on October 13, 2021.

October 29 2021

Respectfully Submitted,



Gary Anthony White, Jr.
Q4-B-101 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Gary A. White, Jr., #309726,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

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

Case No.: 2018-CP-40-0514)

ORDER DENYING APPLICANT'S)
MOTION PURSUANT TO RULE 59(e),)
SCRPC)

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FILED
RICHLAND COUNTY
C.C.P., G.S. 87-1

This matter comes before the Court by way of Applicant's "Motion to Alter/Amend Judgment Pursuant to Rule 59(e), SCRPC," filed August 24, 2021, asking this Court to alter or amend its Final Order of Dismissal denying Applicant's application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In July 2004, the Richland County Grand Jury indicted Applicant for two counts of armed robbery (2004-GS-40-3016; 3018 and kidnapping (2004-GS-40-3017). Public Defenders Lanelle Durant and Stacey Owings represented Applicant. Assistant Solicitors Vanessa Cooper and Dolly Garfield prosecuted the case. On June 14-16, 2005, Applicant proceeded to trial before the Honorable James R. Barber. The jury found Applicant guilty as indicted. Judge Barber sentenced Applicant to imprisonment for life without parole.

Applicant filed a timely notice of appeal. Aileen P. Clare of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on January 16, 2007. On January 29, 2007, appellate counsel filed a petition for rehearing on Applicant's behalf. The Court of Appeals denied rehearing on March 22, 2007. Applicant appealed the Court of Appeals' decision.

On April 23, 2007, Appellate Defender Lanelle Durant filed a petition for writ of certiorari in our Supreme Court. Respondent filed a Return on May 23, 2007. The South Carolina Supreme Court granted certiorari on November 19, 2007. The South Carolina Supreme Court heard argument on February 4, 2009, and on April 27, 2009, the court issued an opinion affirming in result the court of appeals. On May 12, 2009, appellate counsel filed a petition for rehearing, which our Supreme Court denied on May 28, 2009. The case was remitted back to the circuit court on May 28, 2009.

i. First PCR (2009-CP-40-5549)

Applicant subsequently filed an application for PCR on August 5, 2009, in which he alleged the following grounds for relief:

1. New Discovered Evidence
2. Ineffective Assistance of Trial Counsel
3. Ineffective Assistance of Trial Counsel
4. Co-defendant Anthony Morris retracted his trial testimony by way of a sworn statement. The statement itself weakens the States case against Mr. White.
5. Trial Counsel was ineffective by allowing the State to present evidence in case on a charge that was dismissed at the start of trial.
6. Trial counsel was ineffective by failing to pursue objection of jury charge hand of one hand of all. By fail to pursue objection, counsel allowed the jury to give the charge without making a ruling on objected charged.

Respondent filed its Return on May 10, 2010. An evidentiary hearing into the matter convened on October 18, 2010, at the Richland County Courthouse before the Honorable J. Mark Hayes, II. Applicant was present at the hearing and represented by Mark E. Schnee, Esquire. Assistant Attorney General Brian Petrano, of the South Carolina Attorney General's Office, represented the State. On August 31, 2011, Judge Hayes issued the order of dismissal denying Applicant's application for post-conviction relief. Applicant appealed.

Appellate Defender David Alexander perfected the appeal by filing a *Johnson* petition for a writ of certiorari on September 12, 2012. On December 19, 2013, by written order the Supreme Court of South Carolina denied the petition. The remittitur was issued on January 6, 2014. Petitioner submitted a letter to the court on January 2, 2014, which the court construed as a motion to recall the remittitur. The court granted the motion to recall the remittitur on January 16, 2014. Thereafter, Petitioner submitted a *pro se* brief. In an order dated May 7, 2014, the court indicated that “[a]fter careful consideration of petitioner’s *pro se* petition, we adhere to our previous ruling.” The court reissued the remittitur on May 21, 2014.

ii. Federal Habeas Action (1:15-cv-365-DCN-SVH)

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on January 21, 2015. Applicant set forth the following grounds for relief:

Ground One: The Trial Court Erred by denying Appellants objection to the States Expert Witness, a dog-handler, without requiring the State to Establish the Underlying Reliability of dog tracking as a scientific or technical field.

Supporting Facts: See Attached Argument Ground 1 A, B, C.

Ground Two: Newly discovered Evidence

Supporting Facts: See: App. p. 634 – 676 which Petitioner re-argue See A-1 – D

Ground Three: Ineffective Assistance of Counsel

Supporting Facts: See Attached Arguments A, B, C, D Etc.

Ground Four: Newly discovered Evidence

Supporting Facts: (2.) Refer Back to Ground #2 I am arguing Ground 2 to support Ground 4, and I further argue that due to *Martinez v. Ryan* 132 S.Ct 1309 P.C.R. Counsel Ineffectiveness in failing to subpoena co-defendant Anthony Morris and Trial Counsel Lanelle Durant.

Respondent filed its Return and Motion for Summary Judgment on March 30, 2015. On June 23, 2015, the Honorable Shiva V. Hodges issued the Report and Recommendation that the

State's motion for summary judgment be granted and Applicant's petition be denied. Applicant filed his objection to the Report and Recommendation on July 10, 2015.

On July 15, 2015, the Honorable David C. Norton, United States District Judge reversed the Magistrate's Report and Recommendation granting the State's Motion for Summary Judgement and remanded the case. On January 29, 2016, the Honorable Shiva V. Hodges issued another Report and Recommendation that the State's motion for summary judgment be granted and Applicant's petition be denied. On March 15, 2016, the Applicant filed his objection to the Report and Recommendation. On March 21, 2016, the Honorable David C. Norton, United States District Judge adopted the Magistrate's Report and Recommendation granting the State's motion for summary judgement and dismissing the Applicant's petition.

CURRENT ACTION

On January 24, 2018, Applicant filed an application for post-conviction relief in which he alleged the following:

1. Ineffective Assistance of Counsel for not investigating sentence enhancement"
 - a. "According two state law conviction from Kentucky could not be used for enhancement"

On March 30, 2020, Applicant filed an amended application for post-conviction relief. In his amended application, Applicant raised the following additional grounds:

2. Newly discovered evidence such that "an actual conflict of interest existed and was not disclosed to [Applicant]."
 - a. Counsel was ineffective for failure to disclose this
 - b. PCR Counsel was ineffective for failure to investigate and present this claim
3. Fraud upon the court
 - c. "Sampson, Chehoski, Durant [and] Owings deliberately hid and refused to disclose the subject matter of [the conflict of interest] claim[.]"

Respondent made its Return and motion to dismiss on June 19, 2020. This Court issued a Conditional Order of Dismissal on June 26, 2020, provisionally denying and dismissing the application with prejudice. Applicant filed an objection August 14, 2020, and mailed again April 21, 2021. After reviewing Applicant's response in its entirety, this Court issued a Final Order of Dismissal filed July 20, 2021. Thereafter, on August 24, 2021, Applicant filed a "Motion to Alter/Amend Judgment."

APPLICANT'S MOTION TO ALTER OR AMEND

This Court has carefully reviewed the record and considered the arguments presented, and this Court is not persuaded to alter or amend its judgment. This Court finds Applicant 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 Orders of Dismissal in this matter. Applicant has further failed to show he is entitled to an evidentiary hearing. It is therefore ordered that Applicant's motion to alter or amend judgment pursuant to Rule 59(e), SCRCP, is **DENIED**.

AND IT IS SO ORDERED this 27 day of September, 2021.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

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