STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Taurus Watts, #324820	)	2019-CP-40-6500
Applicant	)	
v.	)	**FINAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

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RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Taurus Watts on November 18, 2019. Respondent made its Return and Motion to Dismiss on September 30, 2021, requesting the application be summarily dismissed because it was untimely, successive to Applicant's prior PCR actions, and failed to make a *prima facie* showing 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 October 6, 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 October 12, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant through his retained counsel.

Applicant submitted a response filed on October 18, 2021, titled "Applicant's Response to Conditional Order of Dismissal" wherein Applicant argues it is the fact that his co-defendant is now willing to testify which constitutes the new evidence in this matter. Applicant states neither he nor his co-defendant Wray testified at trial, and even if Applicant could have called Wray as a

witness, Wray was not willing to provide the testimony he allegedly is now willing to provide. 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)).

The willingness of an individual to testify does not constitute newly discovered evidence. An individual's choice to do, or not do, something is not a material fact relevant to the underlying conviction. Rather, it is the information that would be provided via testimony which constitutes the relevant evidence in this matter. Ultimately, the version of facts and information Wray would allegedly testify to is not newly discovered evidence as it was known (or should have been known) by both parties prior to trial, and would easily have been discoverable by exercising due diligence. Evidence was presented at trial that Wray was the driver of the Suburban the evening of the shooting, and was known to drive that type of vehicle and Applicant was the passenger. SLED analysis on the vehicle found gunshot residue consistent with a weapon being fired from the driver's side, the side Wray was on. Applicant's trial counsel presented argument that no one had established Applicant as the fatal shooter during this incident. Moreover, Applicant himself admitted during the hearing for his first post-conviction relief action that most of the evidence in this case when it came to the weapon and gunshot residue concerned his co-defendant. (PCR Tr.

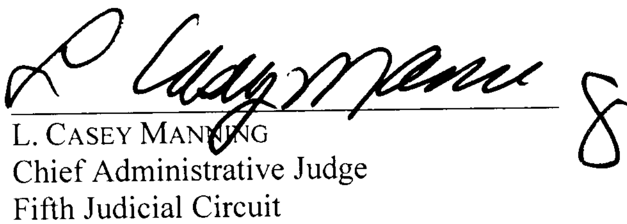
8). Applicant additionally admitted during that hearing he was aware of his right to testify, and ultimately made the decision not to. (PCR Tr. 22).

Applicant and his co-defendant knew their version of the events prior to trial. This Court is not compelled by the assertion that these facts existed in a void inaccessible to Applicant until such time as this PCR action was filed. Both co-defendants had the opportunity to testify as to their version of the incident. Applicant cannot now claim this allegedly exculpatory testimony his role that evening constitutes "newly" discovered evidence when Applicant knew that alleged version facts at the time of his trial. 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. 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, 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 5 **day of** November **, 2021.**



L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina