

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
HONORABLE R. LAWTON MCINTOSH, CHIEF ADMINISTRATIVE JUDGE

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CASE NO. 2020-CP-37-0695

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Dennis M. Temple, SCDC # 274802

Appellant,

v.

State of South Carolina,

Respondent,

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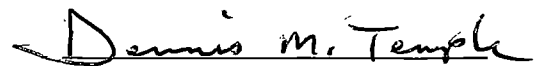
NOTICE OF APPEAL

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Dennis M. Temple appeals the Final Order of Dismissal of the Chief Administrative Judge of Oconee, and Anderson County R. Lawton McIntosh dated November 17, 2021 and filed on November 22, 2021. Appellant received written Notice of entry of this Final Order of dismissal on December 1, 2021.

Lillian L. Meadows, AAG,  
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Bishopville, South Carolina



Dennis M. Temple, SCDC # 274802  
Lee Correctional Institution F6A-2154  
990 Wisacky Highway  
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December 14, 2021

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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT

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Dennis Maurice Temple, SCDC #274802,

Case No. 2020-CP-37-0695

Applicant,

v.

**FINAL ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Dennis Maurice Temple (Applicant) on January 18, 2020. The State made its return on September 14, 2021, requesting the action be summarily dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; for failing to state a cognizable claim under the PCR Act, and because continued litigation by Applicant frustrates the need for finality of litigation.

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 September 21, 2021, and filed September 23, 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 7, 2021, serving the above-mentioned conditional order of dismissal on Applicant.

On October 4, 2021, Applicant filed a motion requesting a thirty-day extension in which to file a response to the conditional order of dismissal. He subsequently filed a response on October

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27, 2021. In his response, Applicant contends the following five claims raise a genuine issue of material fact regarding the timeliness of the action, successiveness of the action, whether it is barred by *res judicata*, and whether he raises a cognizable claim under the PCR Act (verbatim):

1. In this present case, first we notice that the record shows that applicant has been on six different appeals in five different courts and one after the other with no lapse or pause in between these appeals, see. record; Statute of limitation, S.C. Code § Ann. 17-27-45(A)(C) applies in this case. Specifically applicant received a remittitur from second Federal Habeas Corpus petition.
2. The Second events we notice, it appears on the record that during applicant First PCR action he filed a Motion to Amendments PCR application on October 31, 2013, including adding a "Ineffective Assistance of Counsels" claim which was accepted by the PCR court. Also, Applicant filed Schmerber hearing claim. However, PCR Court never issued any findings of facts and conclusions of law regarding applicant ineffective assistance of counsels claim against Sarah Drawdy and Keith Denny. App. 884- 893.
3. The third relevant events that we notice in this case, in the PCR hearing. The applicant stated on the record that Sarah Drawdy and Keith Denny represented him in a July 16, 2010 Preliminary Hearing at the Oconee County Magistrate Court, (quoting..."If Sarah Drawdy and Keith Denny were his lawyers and the State presented their probable cause for arresting me and they never objected and stated specifically the reason for the objection in presenting the evidence, what the law applies to the situation, they was ineffective." App. 858. 1. 17.
4. The fourth, event we noticed in the record was the State admitted in the PCR hearing that Applicant July 16, 2010 preliminary hearing does not exist, but the record clearly and convincingly show a preliminary hearing occurred on July 16, 2010, but was covered up or not transcribed. App. 869 1. 15 -App. 8701.15.
5. For a fifth defense, it appear on the record that prior to applicant's Jury trial on September 14, 2010, another hearing was held before the Judge J. Cordell Maddox. Jr. App. 30. Lindsey Simmons appeared on behalf of the State, and Applicant (Dennis Temple) appeared pro se.<sup>1</sup>

Applicant then claims the first PCR court denied him a full and fair opportunity to present his claims of ineffective assistance of counsel against Sarah Drawdy and Keith Denny, which he framed in the instant PCR application as a claim of ineffective assistance of PCR counsel. He

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<sup>1</sup> Applicant then quotes "App. 32 1. 1-25 -App. 33 1. 1-3."

further states that his motion for a new trial is not untimely because "the State of South Carolina notified Applicant in the July 28, 2014 PCR hearing that the [preliminary hearing] transcript did not exist, 1 year and 10 months after direct appeal."

This Court disagrees with Applicant's first claim that the instant action is timely. The statute of limitations for filing a PCR action begins to run "within one year after the entry of a judgment of conviction or within *one year after the sending of the remittitur to the lower court from an appeal* or the filing of the final decision upon an appeal, whichever is later." S.C. Code Ann. § 17-27-45(A) (emphasis added). Any pending litigation in federal court has no effect on the timeliness of a post-conviction relief action. To the extent Applicant contends the purportedly missing preliminary hearing transcript constitutes newly-discovered evidence, "the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence." S.C. Code Ann. § 17-27-45(C). Thus, any allegation regarding the preliminary hearing transcript should have been brought on or before July 29, 2015. This Court would further note that a motion for a new trial pursuant to Rule 29, SCRCrimP, must be filed in the Court of General Sessions. The remaining claims are successive and barred by *res judicata*, as thoroughly addressed in the conditional order of dismissal.

Finally, this Court would note that Applicant's claims regarding PCR counsel's failure to file a 59(e) motion in his first PCR action are meritless. Our Supreme Court, upon review of the decision of a lower court in a post-conviction relief action, has the power to set aside procedural bars based on issue preservation and remand for further proceedings where dismissal would be fundamentally contrary to the interests of justice. *See, e.g., Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016). In fact, the Court has consistently vacated and remanded PCR judgments that

do not contain sufficient findings on issues presented. *E.g.*, *Bryson v. State*, 328 S.C. 236, 493 S.E.2d 500, 500 (S.C. 1997); *McCullough v. State*, 320 S.C. 270, 464 S.E.2d 340, 340 (S.C. 1995); *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (S.C. 1992); *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (S.C. 1991); *Fishburne v. State*, 427 S.C. 505, 517, 832 S.E.2d 584, 590 (2019). The Supreme Court clearly could have done so in Applicant's case had the order been insufficient for purposes of certiorari review or inconsistent with Judge Dickson's rulings reflected in the record. The Court did not do so in Applicant's case. Thus, it is clear Applicant enjoyed a complete adjudication on the merits of her original application—"one full bite at the apple."

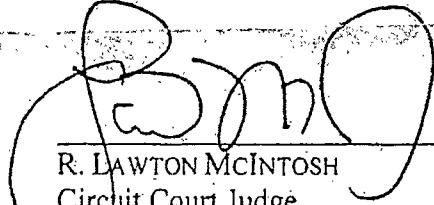
Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that she is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and therefore he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

This Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; for failing to state a cognizable claim under the PCR Act, and because continued litigation by Applicant frustrates the need for finality of litigation.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the 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 17 day of November, 2021.

  
R. LAWTON MCINTOSH  
Circuit Court Judge  
Tenth Judicial Circuit

Anderson South Carolina

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