

State of South Carolina
IN the Supreme Court

Appeal FROM Kershaw County
Court of Common Pleas

L. Casey Manning Circuit Court Judge

Case No. 2020-CP-28-686

Ricky Shepard #155575 _____ Appellant

State of South Carolina _____ Respondent

Notice of Appeal

Ricky Shepard #155575 Appeals the Honorable L. Casey Manning Order dated December 2, 2020 denying Post Conviction relief to the Respondents unsigned litigant received Notice of entry of the Order on December 7, 2021. A copy of the Order i.e., Court Order of Denying PCR on Appeal is attached to this Notice.

Date: 12-15-2021

Ricky Shepard

Ricky Shepard #155575
P.C.I.

430 Oaklawn Road
Pelzer S.C. 29669

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S.C. SUPREME COURT

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DEC 15 2021

PCI MAILROOM

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)
)
 Ricky Shepard, #155575)
)
 Applicant)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2020-CP-28-686

FINAL ORDER OF DISMISSAL

FILED FOR RECORD
 2021 DEC -7 PM 1:37
 JANET C. HASSTY
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Ricky Shepard on August 10, 2020. Respondent made its Return and Motion to Dismiss on October 15, 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 25, 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 November 5, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted a response filed on November 1, 2021, titled "Applicant's Objection to Conditional Order of Dismissal" wherein Applicant argues his action is not untimely due to the new evidence he alleges he received from the Innocence Project on June 4, 2020. Applicant argues his application complies with section 17-27-45(C) of the PCR Act as he filed his application within one year of the letter from the Innocence Project. Applicant additionally alleges the

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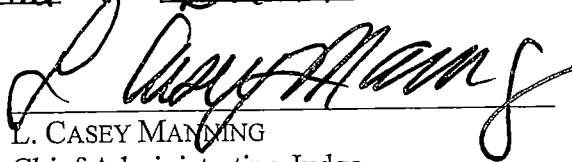
**ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court**

Janet C. Hassty
 Clerk of Court Kershaw County

evidence” is exculpatory and thus is sufficient to have the court grant an evidentiary hearing. This Court disagrees. The provided correspondence from the Innocence Project does not constitute newly discovered evidence. Moreover, the project did not find any exculpatory evidence contrary to Applicant’s claim. The Innocence Project explained in correspondence that through their investigation and work, they were not able to singularly identify the source of DNA or conclude that Applicant did not contribute to the source, which was needed to argue that Applicant would be entitled to relief. Their investigation was inconclusive and thus they informed Applicant they were closing his file. As such, no exculpatory evidence has been provided, and Applicant has failed to make a *prima facie* showing of newly discovered evidence which would warrant relief under the *Hayden*¹ standard. 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 2nd day of December, 2021.



L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

¹ *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983).



ALAN WILSON
ATTORNEY GENERAL

November 29, 2021

The Honorable L. Casey Manning
Chief Administrative Judge
Post Office Box 192
Columbia, SC 29202-0192

Re: Ricky Shepard, #155575 v. State of South Carolina
2020-CP-28-686

Dear Judge Manning:

Enclosed please find the proposed Final Order of Dismissal in the above-captioned case. If this proposed order meets your approval, please sign and forward to the Kershaw County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Yasmeeen E. Klein
Assistant Attorney General

YEK/kw
Enclosure(s)

cc: Ricky Shepard, #155575

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S.C. SUPREME COURT

Ricky J. Shepard #155575-3A105
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29667

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2021 NOV - 1 PM 3:54

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The Honorable Janet C. Hasty
Clerk of Court Kershaw County October 2021
P.O. Box 1557
Camden, S.C. 29021-8557

Re: Ricky J. Shepard #155575 v. State of South Carolina
2020-CP-28-686

Dear Ms. Hasty:

For the Record for Proof. Docket, date Stamp,
then file Applicants Objection to Conditional
Order of Dismissal into Clerk of Court Office
to docket on the Record for Proof. Transmit a
copy to Applicants in the prepaid envelope.

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S.C. SUPREME COURT

Thank you
Ricky J. Shepard

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Ricky J. Shepard, # 155575

V.

State of South Carolina
Respondent

IN THE COURT OF COMMON
PLEA FOR THE FIFTH
JUDICIAL CIRCUIT
2020-CP-28-686
APPLICANTS OBJECTION
TO CONDITIONAL ORDER
OF DISMISSAL

The Applicant object to the Conditional Order of dismissal dated October 15 2021 alleging that Applicant is not entitled to Post-Conviction relief heard on allegations of newly discovered evidence. Because Applicant did not comply with the filing requirement of S.C. Code ANN. § 17-27-45 (A). This is ~~error~~ **error**.

IN Applicant's present case, Applicant had receive new evidence from the Innocence Project on June 4, 2020 and filed his current application for Post-Conviction Relief on August 10, 2020, only (68) sixty eight days has passed since that discovery and filing. Applicant contends that his Post-Conviction Application complies with the exception describe in Al-Shabazz v. State, 338 S.C. 354 S.E. 2d. 742 (2000).

IN Al-Shabazz Supra. Legislature enacted two exception to S.C. Code ANN. § 17-27-45 (B) and (C). This part of the statute sets a one-year deadline to raise newly discovered material facts that requir vacation of a conviction or sentence. See § 17-27-45 (C). Moreover because § 17-27-45 (B)

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S.C. SUPREME COURT Page 1 of 2

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and (C) triggers a new statute of limitation, S.C. ANN. § 17-27-90 does not apply to Applicant's current application. Because new grounds could not have raised in his initial collateral proceeding.

Second because the new evidence is exculpatory is sufficient reason this court to grant a hearing and deny the respondent motion for summary dismissal this petition.

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JANET C. HASLEY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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Thank you,
Ricky J. Shepard
Ricky J. Shepard
Perry Corr. Inst 3A105
430 Oaklawn Rd.
Pelzer, S.C. 29669

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT
2020-CP-28-686

CERTIFICATE OF SERVICE

I have mail a copy of Applicants Objection
to Conditional Order of Dismissal to The
Honorable Janet C. Hasty Clerk of Court
Kershaw County, Post Office Box 1557
Camden, S.C. 29021-8557. I sent a copy of
Applicants Objection to Conditional Order
of Dismissal to the Office of the Attorney
General YasmeeN E. Klein Assistant Attorney
General, PCR Division-Fifth Circuit, P.O. Box
11549. Columbia, S.C. 29211.

Sworn to before me this 28 day
of October 2021
Tamara Conwell (L.S.)
Notary Public for South Carolina
MY COMMISSION EXPIRES: Sept 25 - 2023

FILED FOR RECORD
2021 NOV - 1 PM 3:54
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, SC

Ricky J. Shepard
Ricky J. Shepard
Perry Carr. Inst. 3A105
430 OAKLAWN Road
Pelzer, S.C. 29669

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