

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Marcus L. Martin, SCDC #299118,)
Applicant,)

Case No. 2020-CP-04-1323

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Anders-on, SC CDC, CP/SS

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Marcus L. Martin (Applicant) on July 13, 2020. The State made its return on September 20, 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 doctrines of *res judicata* and *laches*; Applicant failed to make a *prima facie* case of newly-discovered evidence; 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 22, 2021, and filed September 29, 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 15, 2021, serving the above-mentioned conditional order of dismissal on Applicant.

On October 15, 2021, Applicant mailed a response to the conditional order to Assistant Attorney General Lillian L. Meadows. The response was clock-stamped by the Anderson County Clerk of Court on November 17, 2021. This Court has reviewed the response in its entirety and finds a sufficient reason has not been shown as to why the conditional order of dismissal should not become.

In his response, Applicant again attempts to relitigate his first post-conviction relief action, claiming the Supreme Court erred in reversing Judge Hayes' order granting relief and this constitutes a "miscarriage of justice."¹ He contends he is entitled to proceed on the merits of this PCR action based on "failure to inform, explain, or cure the misinformation concerning Applicant's terms by trial court or trial counsel (day for day v. 85%)." As discussed thoroughly in this Court's conditional order, this claim has been rejected on the merits at least twice—by the PCR court on remand and by the federal court in Applicant's federal habeas action. He attempted to raise the claim a third time in a state habeas action, which was summarily dismissed as barred by the doctrine of *res judicata* and for lack of subject matter jurisdiction. Thus, this claim must be summarily dismissed for the reasons set forth in the conditional order.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that 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 a showing based on the information set forth in his response, and, therefore he is not entitled to an

¹ Applicant's claim of "actual innocence" is not a cognizable post-conviction relief claim. Nonetheless, this Court would note that Applicant waived his right to challenge the State's version of facts when he pleaded guilty and waived his right to a jury trial. *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (explaining that a plea waives all non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence and claims of a violation of a constitutional right prior to the plea) (citing *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97 (1975)).

evidentiary hearing in this matter. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

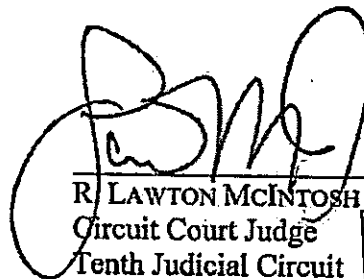
This Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrines of *res judicata* and *laches*; Applicant failed to make a *prima facie* case of newly-discovered evidence; and because continued litigation by Applicant frustrates the need for finality of litigation.

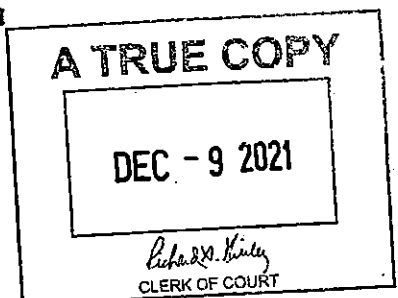
IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

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 9 day of Dec, 2021.

Anderson, South Carolina


R. LAWTON MCINTOSH
Circuit Court Judge
Tenth Judicial Circuit



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