

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Rickey Mazique, #353218,

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No.: 2018-CP-26-2759
)

) **ORDER OF DISMISSAL**
) **PURSUANT TO RULE 4(d), SCRPC**
)

FILED
HORRY COUNTY
2021 DEC 28 2:18
RENEE B. GAVIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Rickey Mazique (“Applicant”) on May 4, 2018. Respondent filed its return on August 7, 2018. The Court convened an hearing into the matter on December 1, 2021, at the Horry County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire, as well as himself. Chelsey F. Marto, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. Prior to the December 1, 2021 hearing, this matter was continued out five times. Five witnesses were present and willing to testify: prosecutors Joshua Holford and Bradley Richardson, Esquires, trial counsels Melinda Knowles and James Galmore, Esquires, and J. Falkner Wilkes, Esquire.¹

The December 1, 2021 hearing began with PCR Counsel and Applicant bickering over what issues to proceed forward with. PCR Counsel stated that he thought raising ineffective assistance of counsel claims was preferable in PCR Court over relitigating the trial. Specifically, Counsel stated that the best issue raised was ineffective assistance of counsel for failure to raise a *Batson* challenge. However, he stated that he thought Applicant had other issues he wanted to raise instead. Applicant stated that he wanted to raise issues concernng the State’s alleged

¹ Mr. Wilkes appeared virtually. All other witnesses appeared in person.

fabrication of a confession by him by fraudulently doctoring the tape so Applicant appeared as if he confessed to the crime to law enforcement. Applicant stated he had every intention to raise all issues alleged in his PCR application.

Applicant stated he wanted to raise claims concerning perjury charges and a *Brady* violation. He stated he intends to bring forward a claim of ineffective assistance of counsel based on these issues. Applicant stated he wanted a transcript of his police interview statement, which Counsel stated he did not obtain because the statement itself was played at trial, Applicant represented himself *pro se* at trial, and no meritorious PCR issues could be raised concerning this statement, nor the transcript. Respondent informed this court that there was a motion for funding of the transcript in June, where Applicant request a transcript of the statement played at trial be created. Counsel stated that, upon further reflection, he decided not to get the transcript, because it would be a waste of the State's money to pay for a transcript of a tape already created that was irrelevant to any meritorious issues that could potentially be raised in a PCR matter.

Applicant stated that the issue concerns whether a confession was made. Applicant alleged that the detective that drafted the reports stating Applicant did not confess and then produced recordings of a supposed confession. He stated that the records were altered, which led to a conflict with his attorneys because they refused to get the recordings for him.

This Court reminded Applicant that he proceeded *pro se* at trial and that everything that happened at trial was a question of fact that led to his conviction, and are not properly raised as a PCR allegation. Applicant claimed that these issues arose before trial, which led him to proceeding *pro se* at trial. This Court stated that during the *Jackson v. Denno* hearing, this Court determined that issues raised were trial issues. Applicant stated his attorneys proceeded forward with the hearing, despite the fact that he never confessed. Applicant claimed that the detective

testified he never admitted to the robbery, which was consistent with a report. Applicant stated that the police fabricated a statement, allegedly by him, which included a confession. This Court informed Applicant that these were all questions of fact for the jury to determine.

Applicant then informed this Court that he wanted to relieve PCR Counsel. Counsel stated he told Applicant about the purpose of the PCR process and, because he represented himself *pro se*, the only meritorious issue he saw was a potential *Batson* issue. Applicant claimed Counsel never went to the prison to talk to him about the case. He stated that there are conflict of interest claims with his original attorneys in the public defender's office because they represented the victim and himself at the same time.

Applicant reasserted his intention to fire Counsel. Applicant was sworn and confirmed that he was not under the influence of anything and that he did not suffer from any disabilities affecting his understanding. He stated that he understood the risks of relieving counsel. Applicant claimed Counsel never gave him the evidence he needed to prove his *Brady* violation; specifically, he never obtained the requested transcript. This Court informed Applicant that his case was going forward that day and he had an option between proceeding *pro se* or continue having Counsel represent him. The State indicated it would move for failure to prosecute if Applicant did not present his case that day, whether it be *pro se* or through Counsel. Applicant requested another attorney, which was denied to him by this Court. This Court reminded Applicant that proceeding *pro se* did not result in favorable outcomes for him multiple times and that he did not have the necessary legal training to represent himself effectively. After Applicant's repeated requests to relieve Counsel after being informed he would not be appointed another attorney, this Court relieved Counsel.

Applicant proceeded forward *pro se*. Applicant called the detective, who was not

subpoenaed, nor present in the courtroom. Applicant called himself and proceeded to try to introduce the detective's reports into evidence. The State objected for hearsay and this Court sustained the objection. Applicant then proceeded to read the detective's report verbatim. The State objected again and this Court sustained the objection. Applicant then proceeded to read the victim's statement into evidence. The State objected for hearsay, and the Court sustained the objection. Applicant stated something to the effect of "if this is how you want to play fine" and stopped presenting his case to this Court and stopped responding to this Court's questions.

Counsel requested he put his issues on the record. The State objected, stating that hybrid representation is prohibited, that Counsel has been relieved and Applicant has not indicated he wants Counsel to represent him again. The Court sustained the objection.

This Court asked Applicant to proceed forward. Applicant failed to respond. This Court requested he proceed forward again. Again, Applicant refused to respond. Thereafter, this Court dismissed the case for failure to prosecute. "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." Rule 41(b), SCRCF. In order to grant a dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant. *McComas v. Ross*, 368 S.C. 59, 62-63, 626 S.E.2d 902, 904 (Ct. App. 2006). The Court must consider four factors before dismissing a case for failure to prosecute: "(1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." *McComas*, 368 S.C. at 63, 626 S.E.2d at 904.

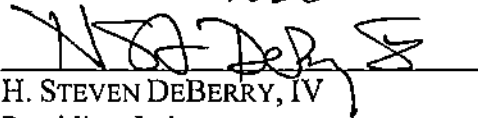
The Court finds the matter is properly dismissed through failure to prosecute. The application has been pending for three and a half years, was continued out five times, Applicant

has established himself as belligerent and unwilling to take advise of legal Counsel or raise meritorious issues on his own, and when instructed by the Court to present issues proper in PCR court, Applicant has failed to do so. When corrected by this Court, he was argumentative and then fell silent, refusing to answer the Court's questions, despite repeated attempts on the part of this Court to get him to present his case. Applicant has had repeated opportunities to raise meritorious issues and has failed to do so. This Court has received no indication that Applicant's behavior or approach would change if given another opportunity to present the case. This dismissal is due to Applicant's behavior and the responsibility for that behavior falls squarely on his shoulders alone. Further, given Applicant's desire to ignore Counsel's advice consisting of raising meritorious issues instead of retrying the trial where Applicant represented himself, if this Court were to allow the matter to proceed forward with non-meritorious claims as Applicant requests it do, the matter would be dismissed with prejudice anyway, thereby eradicating the prejudicial impact a dismissal may otherwise have on Applicant. As such, there is no purpose to the further expenditure of the State's scarce resources, or the time and availability of the judiciary. Dismissal is appropriate. Accordingly, Respondent's motion to dismiss for failure to prosecute is **GRANTED** and the application for post-conviction relief is **DISMISSED**.

IT IS THEREFORE ORDERED:

That the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 15th day of December, 2021.


H. STEVEN DEBERRY, IV
Presiding Judge
Fifteenth Judicial Circuit

Florence, South Carolina