

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Timothy Green, #324607)
 Applicant)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2020-CP-40-3207

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
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 CLERK OF COURT
 C. P. S., G. S., & S. C.

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Timothy Green on July 17, 2020. Respondent made its Return and Motion to Dismiss on October 14, 2021, requesting the application be summarily dismissed because it was untimely, successive to Applicant’s prior PCR actions, and failed to state a cognizable claim for relief.

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 20, 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 December 1, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant submitted a response filed on November 15, 2021, titled “Response to Respondent’s Return and Motion to Dismiss” wherein Applicant argues his application is not successive due to newly discovered evidence, and alleges he could not have raised his allegations of a Brady violation in one of Applicant’s previous actions because he was not aware that the State allegedly did not test the murder weapon. Applicant additionally claims he is not alleging a Brady

violation through prosecutorial misconduct, but “based on a sense of fairness.” Applicant references case action sheets from 2007 where Applicant’s counsel noted forensic and DNA reports counsel had not received yet. Applicant claims he tried to fire his attorney in 2007 due to these missing reports, and that at the time his counsel requested more DNA evidence on the record. Applicant acknowledges in his original post-conviction relief action he alleged ineffective assistance of counsel for failure to disclose Brady materials to him because he misinterpreted the issue as his counsel’s responsibility.

The Uniform Post-Conviction Procedure Act states a person may institute a PCR action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed 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).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show:

(1) [T]he newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the



compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. The record in this case demonstrates Applicant had knowledge of, and in fact raised, the presently~~ly~~ allegations concerning the evidence in his case at the time of his guilty plea in 2007 when he moved to relieve counsel. (Plea Tr. 9-10). During the guilty plea proceeding, Applicant’s counsel ~~acknowledged she~~ requested more DNA evidence reports from the Solicitor’s office and testified she spoke extensively with Applicant regarding his case, and additionally hired a forensic expert to review the discovery and reviewed the forensics with Applicant. (Plea Tr. 13, 14-15). Thus, Applicant had actual knowledge of the forensic evidence in this case prior to his plea, and has failed to raise them in the time frame required by S.C. Code Ann. §17-27-45(C). Further, the Solicitor’s recitation of facts in this case makes clear the primary evidence against Applicant consisted of testimony from Applicant’s co-defendant detailing Applicant’s involvement in this matter and Applicant’s own admissions and statements to law enforcement. (Plea Tr. 27-33). The expected primary use of confessions and testimonial evidence was additionally reflected by Applicant’s plea counsel excerpts of the case action sheet provided as part of Applicant’s response.

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 a showing that he is entitled to relief based on the information set forth and, 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 13th day of January, 2022.



JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina