

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

Honorable J. Derham Cole, Circuit Court Judge

CASE No.: 2020-CP-42-01791

Kenneth J. Craig, #310521 Petitioner,


v

State of South Carolina Respondent.

NOTICE OF APPEAL

The Petitioner Kenneth J. Craig, #310521
appeals the Honorable J. Derham Cole January
11th 2022, Final order of Dismissal post-conv-
iction relief application to the Respondent.
undersigned Pro-se received Notice of
entry of the order on Jan 18, 2022. A copy
of the order on appeal is attached to this
Notice.

Date 1-25-2022

Respectfully Submitted


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JAN 31 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Kenneth J. Craig, #310521
Applicant,

) Case No.: 2020-CP-42-01791
)
)

v.

) **FINAL ORDER OF DISMISSAL**
)
)

State of South Carolina,
Respondent.

This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Kenneth J. Craig on June 1, 2020. Respondent moved to summarily dismiss the application on February 18, 2021, for untimeliness, successiveness, and for failure to establish a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 30, 2021, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not be finalized. Applicant was personally served with this conditional order of dismissal on September 27, 2021, as evidenced by the attached affidavit of personal service.

Applicant has filed two responses to the return and motion to dismiss and conditional order of dismissal. On March 10, 2021, Applicant made his first response entitled "Applicant's refute and reply to Respondent's conditional order of dismissal." In this response, Applicant restated his allegations as listed in the original application and his September 22, 2020 amendment verbatim. Applicant claims the Court in issuing its conditional order looked over section 17-27-45(c), claiming the matter should not be dismissed since they are seeking to raise a newly discovered evidence claim. Applicant claims the application is not untimely or successive

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SOUTH CAROLINA

because of the newly discovered evidence claim. Applicant claims that their newly discovered evidence allegation concerning the missing copy of a supplemental record concerning GSR residue, and a chain of custody report, and that an expert witness was involved in the case at one point is material, would have changed the results of the proceedings, is not cumulative or impeaching, and was discovered within a year of the application being filed.

On September 27, 2021, Applicant made his response "notice motion to amend to applicant refute and reply to Respondent's conditional order of dismissal." In this response, Applicant states that this Court overlooked the PCR statute as it concerns newly discovered evidence claims, alleging the conditional order was improperly issued. Applicant claims the application cannot be dismissed as untimely and successive because he is seeking to raise a newly discovered evidence claim; namely that GSR residue expert testimony and evidence was not presented at his trial and that, after contacting the sheriff's department, he was informed that the office could not locate a supplemental report that was requested. Applicant states he received information that SLED allegedly never performed an analysis on the shoes or shirt and that this information was provided to trial counsel on July 10, 2013. Applicant also states that Counsel was ineffective for failing to investigate Applicant's mental health background. Applicant requests an evidentiary hearing.

This Court has reviewed both responses in full and finds neither are sufficient to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Applicant has not adequately shown why he is entitled to relief based upon newly discovered evidence. Applicant claims he is entitled to relief based upon newly discovered evidence based upon an allegedly missing copy of a supplemental record concerning the GSR

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residue and a chain of custody report as well as newly discovered evidence that an expert witness was involved in the case at one point. However, no case has been made indicating that this information would change the result of the proceeding if a new trial was conducted, why it could not have been discovered prior to trial through the exercise of due diligence, how it is material, or why it is not cumulative or impeaching. Accordingly, this Court finds the application shall remain dismissed for failure to establish a *prima facie* case of newly discovered evidence.

Additionally, this Court finds that the allegations in the application besides the newly discovered evidence claims are barred for untimeliness. Applicant was found guilty at trial on July 25, 2013 and the remittitur from his direct appeal was issued on December 12, 2014. The application was therefore due on December 13, 2015. This application was filed on June 1, 2020, well beyond the statutory filing period. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, the allegations in the application besides the newly discovered evidence claims are barred on successiveness grounds. Applicant's current allegations were or could have been raised in earlier proceedings based upon Applicant's prior PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

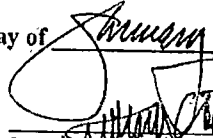
Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his responses, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed for untimeliness, successiveness, and for failure to establish a *prima facie* case of newly discovered

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evidence. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice. This court hereby advises Applicant that 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 11 day of January, 2022.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina

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