

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Darryl Fuller, #325001,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2020-CP-40-1877

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2021 DEC 21 PM 2:06
COURT REPORTER

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Darryl Fuller on April 6, 2020. Respondent made its Return and Motion to Dismiss on September 14, 2021, requesting the application be summarily dismissed because it was untimely, successive to Applicant’s prior PCR actions, and is barred by the doctrine of *res judicata*, 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 27, 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 9, 2021, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

On November 23, 2021, Applicant filed a “Motion to Amend” arguing he should be entitled to an evidentiary hearing due to newly discovered evidence. Applicant thereafter lists examples 1 through 27 of circumstances which he alleges supports his newly discovered evidence claim. Applicant additionally includes various medical records and assessments, correspondence from the social security administration, and letters from previous PCR Counsel. These letters include

one dated April 5, 2012, wherein counsel informed Applicant that the provided documents and records from DMH that Applicant believes is newly discovered was stated at Applicant's plea and presented during Applicant's previous PCR hearing. Counsel concludes this letter by explaining to Applicant that the issue of his competency was fully presented at his PCR hearing, and reminded Applicant any claim of newly discovered evidence must be filed within one year.

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. Correspondence included with Applicant's response demonstrates he had actual knowledge of the issues and claims he now attempts to raise as “newly discovered” in 2012. Applicant did not file this successive PCR action until 2020, well beyond the time limit to raise after discovered evidence claims under S.C. Code Ann. § 17-27-45(c). 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,

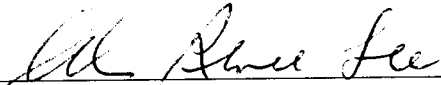
140 S.E.2d 784 (1965). Applicant has failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter.

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 21st day of December, 2021.


ALISON RENEE LEE
Chief Administrative Judge for General Sessions
Fifth Judicial Circuit

Columbia, South Carolina

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