

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF CHEROKEE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP1100172

Thomas Neil Thompson, #80681		State Of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

FILED IN THE OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, SC
 2020 MAR 26 PM 4:11
 BRANDY W. MCCRELL

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be controlled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Controlled (List amount(s) below)
n/a		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ J. Mark Hayes II
 Circuit Court Judge

2132
 Judge Code

3/26/2020
 Date

For Clerk of Court Office Use Only

This judgment was entered on 03/26/2020y mailed first class or placed in the appropriate attorney's box on 03/26/2020neys of record or to parties (when appearing pro se) as follows:

Thomas Neil Thompson, #80681
Trci 10-204A,
200 Prision Rd.
Enoree, SC 29335

Alan McCrory Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Chelsey Faith Marto
1000 Assembly Street Room 519
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED IN OFFICE OF
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CHEROKEE COUNTY, S.C.
2020 MAR 26 PM 4:12
BRANDY W. MCBEE



ALAN WILSON
ATTORNEY GENERAL

March 24, 2020

Brandy W. McBee
Clerk of Court - Cherokee County
PO Drawer 2289
Gaffney, SC 29342-2289

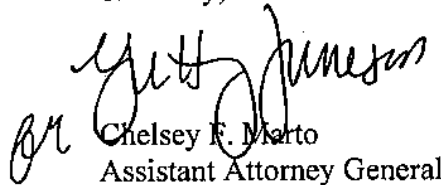
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 MAR 26 AM 10:42
BRANDY W. MCBEE

Re: Thomas N. Thompson, #80681, v. State of South Carolina
2018-CP-11-00172

Dear Ms. McBee:

Enclosed please find the original **Conditional Order of Dismissal**, signed by the Honorable J. Mark Hayes, II, in the above-captioned case for filing in your office. Please forward a time stamped copy back to our office for our file.

Sincerely,


Chelsey F. Marto
Assistant Attorney General

CFM/my
Enclosure

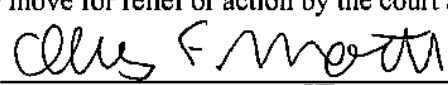
cc:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 CASE NO: 2018-CP-11-00172

THOMAS N. THOMPSON, #80681)
 Plaintiff,)
 vs.)
 STATE OF SOUTH CAROLINA)
 Defendant.)

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Thomas N. Thompson U1-0225-B Tyger River Correctional Institution 100-200 Prison Road Enoree, SC 29335 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Chelsey F. Marto, Esquire South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 3, 2020 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE
 COUNTY, S.C.
 2020 MAR 26
 AM 10:42
 BRANDY W. HOBBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Thomas N. Thompson, #80681,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-11-00172

CONDITIONAL ORDER OF DISMISSAL

FILED IN OFFICE OF
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CHEROKEE COUNTY, S.C.
2020 MAR 26 AM 10:42
BRANDY W. MCBEE

This matter comes before the Court by way of an application for post-conviction relief (hereafter "PCR") filed on March 21, 2018 by Thomas N. Thompson (hereafter "the Applicant"). Respondent made its return, requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its December 1975 term, the Cherokee County Grand Jury indicted Applicant for Murder (1975-GS-1-520). On December 11, 1975, Applicant appeared before the Honorable Robert W. Hayes, circuit court judge, and pled guilty as indicted. Judge Hayes sentenced Applicant to life imprisonment. At the time the offense was committed, South Carolina law permitted parole eligibility after ten years' service of an individual serving a life sentence for murder.

On February 6, 1985, Applicant made his first appearance before the parole board. He was denied parole. He continued to appear before the parole board an additional sixteen times, with the last appearance occurring on October 21, 2015. The reasoning for the most recent denial was the nature and seriousness of the offense, indication of violence in this offense, and use of a deadly weapon during the commission of the crime. A notice of appeal before the Administrative

Law Court was filed, Applicant alleging that the decision was arbitrary and capricious, violated ex post facto, and equal protection, and the constant denial of parole negated the sentencing authority of the court. Respondent responded, denying the allegations. On March 30, 2016, the Honorable John D. McLeod, Administrative Law Court Judge, deciding to dismiss the appeal.

On April 14, 2016, the Applicant filed a notice of appeal before the South Carolina Court of Appeals. Respondents filed their brief on June 20, 2016. The Court of Appeals filed an order on July 5, 2017, affirming the holding of the lower court. The remittitur was issued on September 26, 2017. Applicant filed this PCR application on March 21, 2018.

II. Current Action Before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim): “[c]ourt stipulated parole was to be earned through good behavior – parole board stipulates court did not have this authority.”

Regarding relief, Applicant requests this court “vacate [the] sentence.”

Before this Court are the Spartanburg County Clerk of Court Records regarding the Applicant’s case, Applicant’s South Carolina Department of Corrections records, the plea transcript, the current application for relief, and prior appellate records by reference. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application because Applicant’s allegation of newly discovered evidence is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief 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 material fact not previously presented, the post-conviction relief 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). The Uniform Post-Conviction Relief Act states that 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 material fact not previously presented, the post-conviction relief 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) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the 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).

Here, Applicant alleges he is entitled to PCR relief because he pled under the impression that he could get out on parole after ten years served with good behavior and that the Court would not have discretion over whether or not parole would be granted. Applicant's alleged discovery does not constitute newly discovered evidence. Applicant's new knowledge regarding parole conditions is not material. Applicant presumably had other considerations he took into account when deciding whether to plead guilty or go to trial other than the belief he had concerning parole eligibility, such as the weight of the evidence against him and the weaknesses in any defenses he would assert at trial. Additionally, his previous knowledge regarding the possibility of parole upon good behavior shown is unrelated to his guilt or innocence regarding the crime. Further, any argument asserting he would not have taken the plea does not sufficiently support a finding that Applicant's plea made without knowledge of the evidence is so unfair that it constitutes injustice entitling him to post-conviction relief. Accordingly, this Court shall summarily dismiss the application because Applicant's allegation that he is entitled to PCR relief because of newly discovered evidence is without merit.

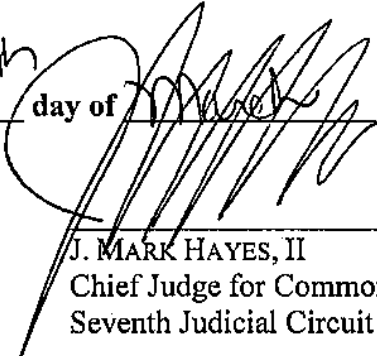
IV. Conclusion

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why it should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this order to show why this order should not become final. Applicant shall file any reasons he has with the Spartanburg County Clerk of Court and serve opposing counsel at the following address:

Office of the Attorney General
Chelsey F. Marto, Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty days from the date of the service of this order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 19th day of March, 2020.



J. MARK HAYES, II
Chief Judge for Common Pleas
Seventh Judicial Circuit

Cherokee, South Carolina