

The State of South Carolina
in The Supreme Court

Appeal from Georgetown County
Court of Common Pleas

Honorable D. Craig Brown, Circuit Court Judge

Case No: 2021-CP-22-00700

Christopher L. Grate, #232524 . . . Petitioner

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S.C. SUPREME COURT

state of South Carolina . . . Respondent

NOTICE OF APPEAL

The Petitioner appeals the Honorable D. Craig May 18th 2022 Final order denying post-conviction relief to the petitioner, undersigned pro-se counsel received Notice of entry of the final order May 23, 2022. A copy of the final order appeal is attached to this Notice of Appeal.

S.C.

Other Counsel

A: G: O:

Date 5-26 2022 (Ridgerville, S.C. 29472)

Respectfully Submitted

s/ Christopher L. Grate

Christopher L. Grate

#232524

136 Wilboan Ave

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

Christopher Grate, #232524,
Applicant,

) Case No.: 2021-CP-22-00700
)
)

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 Christopher Grate on August 20, 2021. Respondent moved to summarily dismiss the application on January 12, 2022, for successiveness and untimeliness.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated February 8, 2022, 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 March 15, 2022, as evidenced by the attached affidavit of personal service.

Applicant has offered two documents since filing the original PCR application. On December 20, 2021, Applicant filed a document entitled "notice motion amend post-conviction relief application." In this response, Applicant stated that in his last PCR application he alleged Counsel was ineffective for failing to request a jury charge on the lesser-included offense of assault and battery of a high and aggravated nature and that the trial judge misled the jury regarding the law of self-defense. Now, Applicant claims newly discovered evidence that the Georgetown Clerk of Court never filed for a copy of the search warrant to seize evidence in this case. Applicant claims this indicates that a search warrant was never involved in the case at all.

Applicant claims he is entitled to an evidentiary hearing based upon the alleged newly discovered evidence.

On February 4, 2022, Applicant filed a document entitled "Applicant objection to conditional order of dismissal and request for hearing." In this response, Applicant claims he is entitled to an evidentiary hearing because Respondent did not respond to the December filing in the initial return and conditional order and because he claims the newly discovered evidence claim raises an issue of material fact the record does not refute. Applicant claims that the Court must assume the allegations made by Applicant are true because no evidentiary hearing has been held yet. Applicant claims extraordinary circumstances exist in this case because of his allegations a search warrant does not exist. Applicant claims he is entitled to an evidentiary hearing and vacation of his convictions because of this discovery. Applicant also alleges he is entitled to equitable tolling of the application because of this discovery and how, he claims, it constitutes extraordinary circumstances. Applicant also pointed out that the State did not timely file their return and motion to dismiss.

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.

As a preliminary matter, to the extent he raises it in seeking a grant of post-conviction relief, the Court denies Applicant's motion to find the State's return untimely. The grant of post-conviction relief due to the State's failure to reply or lateness of reply is not appropriate. *See* Rule 55(e), SCRPC ("No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof unless the claimant establishes his claim to relief by evidence satisfactory to the Court[.]"). A colorable claim for relief must be supported by

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P 2/15

evidence and testimony on the record and a meritless application cannot be saved by inaction by the State. Accordingly, the Court denies Applicant's motion for default judgment.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on March 1, 2006, and the remittitur from his direct appeal issued on January 26, 2009. Thus, his PCR application was due on January 27, 2010. The current application was not filed until August 20, 2021. Applicant has failed to sufficiently explain the eleven-year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant's application is 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.

This Court finds Applicant's claim of newly discovered evidence must be summarily dismissed because Applicant has failed to make a *prima facie* showing he is entitled to relief for his claim. 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). To prevail, Applicant must show the newly-discovered evidence:

- (1) is such that it would probably change the result if a new trial were granted;
- (2) has been discovered since the trial;
- (3) could not in the exercise of due diligence have been discovered

DCB
p. 3 of 5

- prior to the trial;
- (4) is material; and
- (5) is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Applicant's newly discovered evidence issue is founded upon the fact that the search warrant was not located in the clerk's file. Applicant has extrapolated from this that there is no search warrant involved in the case at all. This conclusion is based on nothing more than mere speculation. Applicant has failed to show that either the search warrant was fabricated, or the State actively engaged in misconduct when claiming it existed when it did not. Additionally, there has been no showing that this is material to the case or would have changed the results at trial. Further, Applicant could have discovered this through due diligence before trial. Thus, Applicant has failed to make a *prima facie* case of newly discovered evidence and, accordingly, relief is denied on this ground and the action summarily dismissed as a result.

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 successiveness, untimeliness, and failure to establish a *prima facie* case of newly discovered 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

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P. 4 of 5

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 18th day of May, 2022.


D. CRAIG BROWN¹
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina

¹ The Honorable Steven H. John is currently the Chief Administrative Judge for Common Pleas for the Fifteenth Judicial Circuit, and the Honorable Benjamin H. Culbertson is currently the Chief Administrative Judge for General Sessions for the Fifteenth Judicial Circuit. However, because they oversaw Applicant's prior actions, the proposed final order of dismissal is being sent to the Honorable D. Craig Brown, Chief Administrative Judge for Common Pleas for the Twelfth Judicial Circuit. Judge Brown also issued the conditional order of dismissal in this matter because of the aforementioned conflict.

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P. 5/15

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ALAN WILSON
ATTORNEY GENERAL

May 20, 2022

The Honorable Alma Y. White
Georgetown County Clerk of Court
PO Box 479
Georgetown, SC 29442-0479

Re: Christopher Grate, #232524 v. State of South Carolina
2021-CP-22-00700

Dear Ms. White:

Enclosed please find the Final Order of Dismissal signed by the Honorable D. Craig Brown in the above-captioned case for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Chelsey F. Marto
Assistant Attorney General

CFM/em

cc: Christopher Grate, #232524

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Chelsey F. Marto, AAG
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

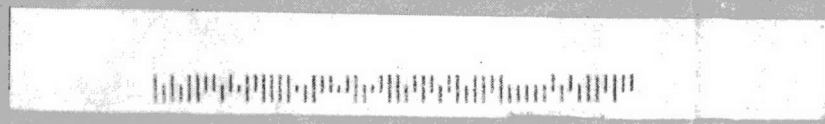
Christopher L. Grate, #232524
(AB-0056-B)
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

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LIEBER C.I.



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