



ALAN WILSON
ATTORNEY GENERAL

August 15, 2013

The Honorable J. Michael Baxley
Judge, 4th Judicial Circuit
531 East Carolina Avenue
Hartsville SC 29550-4311

Re: Timothy Michael Farris v. State of South Carolina
2012-CP-16-0814

Dear Judge Baxley:

Enclosed please find the proposed original **Final Order of Dismissal** in the above-captioned case. If this order meets with your approval, please sign same and return to me in the enclosed envelope and I will forward to the Darlington Clerk of Court to be filed and served.

Sincerely,

Joshua L. Thomas
Assistant Attorney General

JLT/jacc
Enclosure(s)

cc: Timothy Michael Farris
7910 Hillanby Court
Waxhaw NC 28173

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	FOR THE FOURTH JUDICIAL CIRCUIT
Timothy Michael Farris,)	Case No. 2012-CP-16-814
Applicant,)	
v.)	FINAL ORDER OF DISMISSAL
State of South Carolina,)	
Respondent.)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 24, 2012. Respondent made its Return and Motion to Dismiss on January 15, 2013, requesting that the application be summarily dismissed as untimely. Pursuant to this request, the Court reviewed the pleadings in this matter and all of the records attached thereto. This Court issued a Conditional Order of Dismissal, filed on February 5, 2013, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order to show why the dismissal should not become final. Applicant received a copy of the conditional order on February 8, 2013.

Applicant filed a *pro se* document captioned "Reply to Motion to Dismiss and Conditional Order of Dismissal" on February 13, 2013. In this document, Applicant "requests this Court to find the State in procedural default as a matter of law, and seeks relief in accord with McCoy v. State on the basis that there are genuine issues of material fact which necessitates an evidentiary hearing." As an initial matter, the Court notes that the State cannot be held in default. Rule 55(e), SCRCP. Further, Applicant has not alleged any prejudice from the delay by Respondent in filing its reply. See Kneece v. State, 269 S.C. 177, 178, 236 S.E.2d 746, 747

(1977) (citing Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974)). Therefore, the Court declines to hold Respondent in default.

Likewise, the Court declines to grant Applicant an evidentiary hearing. Applicant's reliance on McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), is misplaced. McCoy does not create a blanket rule that a hearing is required for every allegation of newly discovered evidence. Rather, McCoy addressed newly discovered evidence in the form of juror misconduct. McCoy, 401 S.C. at 366, 737 S.E.2d at 625. The applicant in McCoy provided direct evidence of juror misconduct. Id. at 367, 737 S.E.2d at 625 ("In support of his claim, Petitioner submitted an excerpt of the *voir dire* transcript wherein Juror 84 revealed her relationship to the Solicitor and a copy of defense counsel's requested *voir dire* from his own trial, which included the specific question to which Juror 84 failed to respond."). In the present case, Applicant merely alleges that he "received new evidence on June 4, 2012," but does not provide any indication of what evidence he received. Because Applicant has failed to provide specific support for his argument, he has not shown that the newly discovered evidence 1) would probably change the result if a new trial was had, 2) has been discovered since trial, 3) could not by the exercise of due diligence have been discovered before trial, 4) is material to the issue of guilt or innocence, and 5) is not merely cumulative or impeaching. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (citing Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)). Therefore, Applicant has not demonstrated that a hearing is required to address evidence "that is material to the accused's guilt or innocence." McCoy, 401 S.C. at 371, 737 S.E.2d at 627.

Having reviewed the original pleadings and Applicant's submissions¹, the Court finds that Applicant has not shown a sufficient reason why the Application is not untimely and why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, and Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED.

THE HONORABLE J. MICHAEL BAXLEY
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

_____, 2013
Hartsville, South Carolina

¹ Applicant also filed documents titled "Applicant's Motion for Expedited Hearing on Motion for Summary Judgment[,]" "Motion for Appointment of Counsel Third Request[,]" and Motion and Memorandum for Summary Judgment for the Applicant" on August 9, 2013. However, since these documents were filed well beyond the twenty (20) day limit established by the conditional order, the court has not considered them in issuing this ruling

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

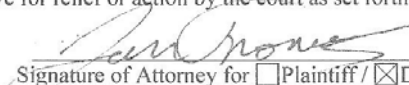
Timothy Michael Farris)
 Plaintiff)

CASE NO.
2012-CP-16-0814

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina)
 Defendant.)

Plaintiff's Attorney: Timothy Michael Farris, Bar No. Address: 7910 Hillanby Court Waxhaw NC 28173 phone: (704) 256-9001 fax: e-mail: other:	Defendant's Attorney: Joshua L. Thomas, Bar No. 100777 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 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 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	
August 15, 2013 Date submitted	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <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: _____	