

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Reginald Byrd, #209137,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-01182

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Reginald Byrd on March 30, 2020. 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 of the Spartanburg County Clerk of Court. In November 1992, the Spartanburg County Grand Jury indicted Applicant for murder (1992-GS42-6643). Theo Mitchell, Esquire represented Applicant. Applicant proceeded to trial before the Honorable Joseph Cole. He was convicted and sentenced to life imprisonment on December 16, 1993.

Applicant filed a timely notice of appeal on December 22, 1993. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Byrd*, Op. No. 24483 (S.C. filed Aug. 19, 1996). The remittitur was issued on September 4, 1996.

Prior PCR Case: (1997-CP-42-00607)¹

Applicant filed his first PCR application on March 4, 1997. The matter was heard before the Honorable John W. Kittredge, now-South Carolina Supreme Court Justice. Respondent was

¹ The records for this matter and subsequent appeal have been destroyed.

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represented by Attorney Teresa Crosby. The matter was dismissed by the Court on April 29, 1999. An appeal was filed, which was also dismissed.

Prior Habeas Corpus Case: (9:01-3070-19BG)²

Applicant filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 on August 3, 2001. The Magistrate's report and recommendation was issued August 7, 2002. The matter was dismissed in the district court on September 6, 2002.

II. Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Ineffective assistance of counsel for failure to investigate."
 - a. "Failure of counsel and the court, to investigate the laws of South Carolina as to whether they were "affixed" with the impression of the Great Seal of South Carolina. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read: S.C. Const. Act. III, Section 18, §18, Formalities of Act. No bill or joint resolution have the force of law until it shall have been read (3) times and on (3) several days in each house, has had the (Great Seal) of the State affixed to it, and has been signed by the president of the senate, and the speaker of the House of Representatives: provided, that either branch of the General Assembly may provide by rule for a first and third reading of any bill or joint resolution by its title only. The Great Seal of the state must be attached to an act before it can become effective, 1974-75. Op. Atty. Gen. 4013 pg. 85."
2. "Newly Discovered Evidence" and "Fraud Upon the Court."
 - a. "The Applicant asserts upon belief and fact, that on or around November 2017, the State newspaper reported the Great Seal of the State of South Carolina, missing from certain laws here in South Carolina. Furthermore, the Applicant has researched this newly discovered evidence with the S.C. Department of archives and history, with a Mr. Steven Tuttle confirming the Great Seal of South Carolina is not affixed to the 1993 Act No. 184 (see exhibit 1). Also, the Applicant will submit a letter from a Mr. Steven Draffin addressed to Mr. Spencer Hewitt, that states the Original 1995 Act No. 7, has been lost and only a duplicate copy resides at the S.C. Department of archives and history (see exhibit 2). Both Federal and State constitutions forbid any law impairing the obligations of contracts. Therefore, the obligation of a contract is that duty of performing the contract according to its terms and intent which the law recognizes and enforces. Again,

² The records in this matter have since been destroyed.

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like any ordinary bill must in order to have force of law (must) have the Great Seal of the State attached thereto. Due to the facts of evidence, the Applicant moves this court to allow this post-conviction relief application to proceed. Furthermore, the Applicant asserts that this matter is a due process violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and the S.C. Constitution, Article III, Section 18.”

By amendment filed August 21, 2020, Applicant alleged:

1. Ineffective assistance of counsel
 - a. “failure of counsel to move for a ‘Batson challenge’ during the voir dire proceeding, and furthermore, counsel failed to preserve the issue for appellate review.”

By amendment dated April 29, 2021, Applicant alleged:

1. Ineffective assistance of counsel for”
 - a. Failure to object to prosecution’s seating of an all-white jury.
 - b. Violation of Article 1, section 14 of the South Carolina Constitution.
 - c. Violation of United States Constitution 14th Amendment Due Process and Equal Protection.

Before this Court are Applicant’s Spartanburg County Clerk of Court Records, Applicant’s South Carolina Department of Corrections Records, and the current PCR application.

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 South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one

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year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was found guilty at trial on December 16, 1993. The application was therefore due on December 17, 1994. This application was filed on March 30, 2020, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

The application shall be summarily dismissed because it is successive to Applicant’s previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally

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adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive PCR applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR application. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant’s previous PCR application.

Newly Discovered Evidence (The Great Seal)

Applicant alleges there is no visible impression of the Great Seal on the Acts of which he was convicted under. Our Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is properly passed when ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the

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Office of Secretary of State. *Medical Soc. of South Carolina v. Medical Univ. of South Carolina*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. *See Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); *Commr’s of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. *Id.* Moreover, Section 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm’n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore,

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these laws are enforceable, and Applicant's allegation lacks merit.

Applicant's discovery of the missing Great Seal does not constitute newly discovered evidence, nor is it grounds to nullify the law the Applicant was convicted under. This evidence was discoverable prior to trial. Because he proceeded to trial and has delayed in filing this action since, Applicant has waived his right to present any and all defenses that he may have had, and cannot raise them now in his current PCR application based upon "newly discovered evidence."


IV. Conclusion

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

Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Seventh 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, 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 4th day of March, 2022.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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ALAN WILSON
ATTORNEY GENERAL

January 18, 2022

The Honorable R. Keith Kelly
7th Circuit Chief Administrative Judge
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: Reginald Byrd, #209137 v. State of South Carolina
2020-CP-42-01182

Dear Judge Kelly:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss was sent to your chambers on January 18, 2022 for your consideration. If this proposed order meets your approval, please sign and forward to the Spartanburg County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Chelsey F. Marto
Assistant Attorney General

CFM/geh
Enclosure(s)

cc: Reginald Byrd, #209137

