

COPIES

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Curtis Dale Richardson, 269166)
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)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-26-7193

**ORDER DISMISSING
 PETITION FOR HABEAS CORPUS**

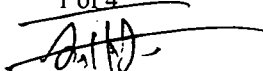
HORRY COUNTY
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 MELANIE HUBBINS-WARD
 CLERK OF COURT

This matter came before the Court by way of Petition for a Writ of Habeas Corpus filed August 29, 2012, by the above named Petitioner. Respondent made a Return and Motion to Dismiss November 6, 2012, requesting that the action be summarily dismissed. Incorporated herein by reference are the records of the Clerk of Court regarding Petitioner's conviction.

PROCEDURAL HISTORY

Applicant was indicted by the Horry County Grand Jury for unlawful possession of a pistol (2010-GS-26-3427) possession of marijuana with intent to distribute (2010-GS-26-2856) and distribution of crack cocaine (2010-GS-26-2857).

On September 16, 2011, Applicant pled guilty as indicted before the Honorable Benjamin H. Culbertson. He was represented by Brana J. Williams, Esquire. Judge Culbertson sentenced Applicant to three years for the unlawful pistol charge and five years, concurrent, for the marijuana charge. The possession with intent to distribute crack cocaine charge was dismissed the same day as the plea. A timely notice of appeal was served on September 22, 2011, but Applicant decided to drop his appeal by letter from Robert M. Pachak dated April 24, 2012.

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SC Court of Appeals

By way of further procedural history, Applicant was convicted on May 1, 2008, of 10 counts of fraudulent check (amount under \$500) in the Loris Magistrate Court. Judge Aaron C. Butler sentenced him to an aggregate sentence of 30 days imprisonment, or payment of restitution. The Applicant was also convicted on J-479795, another count of fraudulent check (amount under \$500) on July 14, 2008, in the Conway Magistrate Court. Judge Bradley Dwyer Mayers imposed a sentence of 30 days confinement or payment of restitution and court costs. Applicant was served on August 28, 2009, with bench warrants regarding these charges. Though Applicant indicated no appeal was filed, it later came to the State's attention that an appeal was filed by the Applicant on September 28, 2009, with the Horry County Clerk of Court. Subsequently this appeal was dismissed without prejudice on June 7, 2011.

PCR for check charges – September 28, 2009

Applicant filed his first PCR regarding his check charges on September 28, 2009, the same day he filed his direct appeal. Because the direct appeal was still pending when the PCR was filed, the PCR was dismissed without prejudice by the Honorable Benjamin H. Culbertson on February 18, 2010. No appeal was filed from the dismissal of this PCR.

On January 8, 2010, the Supreme Court of South Carolina entered a “Maxton Order” dealing with the “repetitive, frivolous and abusive nature of petitioner’s filings in the courts of this state.”¹ This order dealt specifically with cases that require a filing fee.

PCR – April 24, 2012

Applicant filed a Post Conviction Relief Application on April 24, 2012. This matter is still pending.

¹ See In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996)

ALLEGATIONS

In his Petition for a Writ of Habeas Corpus, Petitioner claims S.C.D.C. has changed his classification from "Violent and not parole eligible." Petitioner further avers he has been denied a parole hearing and equal protection of the law. Petitioner avers his grievance "procedure is exhausted." Petitioner has not alleged exhaustion of the Administrative Law Court, stating that pursuant to the Maxton Order against him Petitioner moves "This Honorable Court issue an injunction and temporary restraining order against the SCDC and SCDPPPS and grant damages for mental anguish stress and psychological cruelty imposed by same..."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

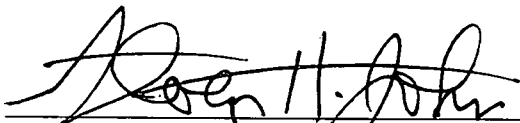
This Court finds that the Petition for a Writ of Habeas Corpus must be summarily dismissed. "The purpose of habeas corpus is to test the legality of the prisoner's present detention." McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (1965). The only remedy that can be granted is release from custody. Id. "A habeas corpus petition must support the requested relief." Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). The petitioner must make out a prima facie case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id., at 40, 495 S.E.2d at 427-28. The petition must allege that petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, *cert. denied*, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). Id. If the petition, on its face, meets these requirements, petitioner is entitled to a hearing. Id.

In this matter, Petitioner has a pending PCR action and has also failed to exhaust his remedy in the Administrative Law Court.

Accordingly, because Petitioner has failed to state a claim upon which relief could be granted, the Petition must be summarily dismissed. See Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965) (a petition for writ of habeas corpus is properly dismissed without a hearing if it contains no allegations which warrant the issuance of the writ).

Accordingly, the Petition for Habeas Corpus is hereby **DENIED** and **DISMISSED** with prejudice.

AND, IT IS SO ORDERED this 14th day of November, 2012.


The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina

