

Oct 25 2022

S.C. SUPREME COURT
STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Michael Rufus,

Applicant

Case No.: 2017-CP-31-0311



v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Michael Rufus (Applicant) on December 18, 2017. Respondent made its return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the Georgia Department of Corrections. Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. Applicant was indicted at the May 1996 term of the Lee County Grand Jury for possession with intent to distribute crack cocaine, possession with intent to distribute marijuana, possession of stolen goods, discharging firearm into a dwelling, two (2) counts of minor in possession of a pistol, two (2) counts of carrying a pistol and two (2) counts of criminal conspiracy (1996-GS-31-0096)¹. On April 21, 1997, Applicant pled guilty before the Honorable Alexander Stephens Macaulay and was sentenced to five years' imprisonment. Applicant did not appeal conviction or sentence.

¹ According to his application for post-conviction relief, Applicant is only challenging the possession with intent to distribute marijuana charge.

Applicant filed an application for post-conviction relief in 1997 (Case No. 1997-CP-31-00172). By Order filed August 24, 1998, Applicant's application was dismissed. Thereafter, Applicant filed a PCR appeal in 1998, which was also dismissed.

CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Petitioner's trial court fraudulently, in violation of the Due Process"
 - a. Applicant argues that because he is a "private citizen" the court's exercise of jurisdiction is void.
2. "Petitioner's infusion in the trial court's jurisdiction as pleaded"
 - a. Ineffective assistance of counsel due to counsel's failure to inform Applicant of his "civil status as [a] private citizen"
3. "Petitioner's trial court's unlawful exercise of jurisdiction and issuance of the judgement"
 - a. Applicant makes an Equal Protection Clause argument in conjunction with the Statute of Frauds and "similar provisions of the SSA"
 - b. Applicant has "[n]ever been a party to a lawful contract wherein it permits or can be presumed that he would or could be submitted to a court of special or limited jurisdiction"

Applicant requests relief as follows:

- "Adjudicate Petitioner's conviction void and unconstitutional as herein pleaded [illegible] judgment against the state and real [illegible] of interest prohibiting and voiding any past, present, and future injustices as this and any relief justice requires."

Before this Court are the records of the Lee County Clerk of Court regarding subject convictions, Applicant's records from the South Carolina Department of Corrections, and the current application.

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 based upon the following findings:

Statute of Limitations

This Court finds the current application shall 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 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). In addition, S.C. Code Ann. § 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 pled guilty to possession of marijuana with intent to distribute on April 21, 1997. This application was filed on December 18, 2017, well beyond the statutory filing period. Therefore, this Court summarily dismisses the application for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

This Court finds that the current 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 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 post-conviction relief 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. 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).

This Court finds 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 S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and this Court summarily dismisses the application as successive to Applicant's previous PCR application.

Laches

This Court further finds the current application shall also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief nearly 22 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of

denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years' time” when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this Court finds the application shall be summarily dismissed as barred by the equitable doctrine of laches.

Applicant Alleges No Genuine Issue of Material Fact

This Court dismisses Applicant's application pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Applicant has presented no facts whatsoever to support his claims of ineffective assistance of counsel and subject matter jurisdiction, except that he is a “private citizen.” “[C]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 11. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's assertion that he is a “private citizen” and, thus not subject to the jurisdiction of the courts is wholly without merit and does not present a genuine issue of material fact. Applicant's conviction involved a criminal charge in the Court of General Sessions and the Court of General Sessions had jurisdiction to hear Applicant's case. Applicant has failed to present any valid facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to preside. Accordingly, this Court dismisses this Application pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that Applicant does not raise any genuine issue of material fact.

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 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 Lee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Brianna L. Schill
PCR Division - 3rd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 20th day of January, ²⁰²⁰ 2019.

George M. Mceaddin Jr.
GEORGE M. MCEADDIN JR.
Chief Administrative Judge
Third Judicial Circuit

Sumter, South Carolina