

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Maite Murphy, Circuit Court Judge

Case No: 2020-CP-02-1113

Michael T. Quarles #355492.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on August 30, 2022. Appellant received written notice of the Order of Dismissal entered on August 30, 2022, by mail on September 28, 2022. A copy of the Order of Dismissal appealed from is attached.

October 28, 2022



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STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT
 C/A No.: 2020-CP-02-1113

ORDER OF DISMISSAL

This matter comes before this Court by way of the post-conviction relief application filed on June 10, 2020. In its return, the Respondent requested the application be summarily dismissed as successive. A hearing was held on May 26, 2022. Applicant was present and represented by his court appointed attorney Mr. Arthur Aiken. The State was represented by Assistant Attorney General Tommy Evans, Jr. Once this case was called for a hearing the State moved to dismiss with prejudice due to successive applications.

Following review of the arguments presented by both parties, this Court finds Applicant has failed to establish any sufficient reason why he could not have raised his allegations in his previous application for post-conviction relief, and this application must be considered successive in violation of South Carolina law. This case must be subject to dismissal.

PROCEDURAL HISTORY

In May 2013, the Aiken County Grand Jury indicted Applicant for Armed Robbery (2013-GS-02-0760) and Kidnapping (2013-GS-02-0761). Michael Chesser, Esquire, represented Applicant. Assistant Solicitors Nicholas R. McCarley and Kevin Malony of the Second Circuit Solicitor's Office were the prosecutors. On May 14, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. The jury found Applicant guilty on all charges.

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Robert J. White
 C.C.P. & G.S.
Charlea Griffen Plowden
 Deputy Clerk

Immediately after his conviction the Applicant was sentenced to a twenty-eight (28) year term of imprisonment for both the offenses. The court ordered that these sentences were to run concurrently. Applicant filed a timely notice of appeal. In his appeal, Applicant raised the following issue:

1. The trial court erred in admitting the 9-1-1 tape from the call the victim made immediately following the robbery because it was emotionally charged, meant to inflame the passions of the jury, and was not needed since it only bolstered the victim's testimony which made the 9-1-1 call prejudicial.

On July 1, 2015, the South Carolina Court of Appeals affirmed Applicant's sentence and convictions in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 15-UP-317 (S.C. Ct. App. Filed July 1, 2015). The Remittitur was issued on July 22, 2015.

First PCR Application: 2015-CP-02-1909

On August 6, 2015, Applicant subsequently filed his first application for post-conviction relief. Applicant alleged he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel

The State filed its Return and Motion for a More Definite Statement on November 17, 2015.

On December 3, 2015, counsel filed an amendment on behalf of the Applicant, alleging these additional claims:

1. Ineffective Assistance of Counsel
 - a. "Failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995)."
 - b. "Failed to request lesser included charge."
 - c. "Failed to explain concept of hand of one, hand of all."
 - d. "Failed to object to out of state convictions during sentencing."

On April 26, 2016, an evidentiary hearing was held before the Honorable Diane S. Goodstein.

Present was the Applicant represented by his appointed counsel Lance S. Boozer. Respondent was

represented by Assistant Attorney General Julie A. Coleman of the South Carolina Office of the Attorney General. By order dated September 2, 2016, the Honorable Diane S. Goodstein granted the application concluding that Applicant met his burden of proof "in showing he received ineffective assistance of counsel and counsel's performance prejudiced him as it relates to counsel's failure to object to the trial court sentence and failing to preserve the issue for appellate review." On September 8, 2016, Respondent made its Motion to Reconsider pursuant to Rule 59(e). On September 14, 2016, Applicant filed a return to the State's motion to reconsider.

On May 24, 2017, a hearing was held before Judge Goodstein regarding the motion to reconsider. Again appearing for the Applicant was his court appointed attorney Lance S. Boozer. Once again appearing for the State was Assistant Attorney General Julie A. Coleman. On June 30, 2017, Judge Goodstein filed an amended order granting resentencing rather than a new trial.

On March 2, 2018, Applicant appeared before the Honorable William P. Keesley for resentencing. C. David Hayes of the Second Circuit Public Defender's office represented Applicant. Assistant Solicitor J. William Weeks of the Second Circuit Solicitor's office represented the State. Judge Keesley resentedenced Applicant to a twenty-five (25) year period of incarceration for each offense to be served concurrently.

A timely notice of intent to appeal was served on March 6, 2019. On January 14, 2019, on behalf of Applicant, Appellate Defender Kathrine H. Hudgins filed an *Anders*¹ brief. The Court submitted the case without oral argument. On February 1, 2020, the South Carolina Court of Appeals affirmed Applicant's conviction and resentencing in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 20-UP-080 (S.C. Ct. App. March 25, 2020). The Remittitur was issued on June 10, 2020.

¹ *Anders v. California*, 386 U.S. 738 (1967).

Current PCR Application: 2020-CP-02-01113

In his second application for post-conviction relief, filed June 10, 2020, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failing to advise."
2. Ineffective Assistance of PCR Counsel
 - a. "Failing to request new trial."

Applicant requests a new trial as a form of relief.

The State made its Return and Motion to Dismiss on or about October 20, 2020, requesting that this application be dismissed.

Before this Court are the records of the Aiken County Clerk of Court regarding the Applicant's convictions, Applicant's records from the Department of Corrections, Applicant's current PCR application, and the records from Applicant's previous PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. Successive applications for post-conviction relief are disfavored unless there is a sufficient reason. The South Carolina Code of Laws specifically state:

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.

S.C. Code Ann. §17-27-90 (2014).

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Acie 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.* The Supreme Court also stated, "For these reasons who hold the contention that prior PCR counsel was ineffective is not *per se* 'sufficient reason' allowing for a successive PCR application under §17-27-90." *Id.* at 452, 409 S.E.2d at 395. The Applicant bears the burden of showing that the allegations could not have been raised previously. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant has already raised these grounds for relief in a previous application and the court decided in his favor. No law exist allowing an Applicant to raise the identical allegation in a second application. Therefore, this application is barred as successive.

During the hearing Applicant's counsel raised the United States Supreme Court decision of *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309 (2012). In *Martinez*, the United States Supreme Court decided:

Where under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.

Martinez, 566 U.S. at 17, 132 S.Ct. at 1320.

However, in *Kelly v. State*, 404 S.C. 365, 745 S.E.2d 377 (2013), the South Carolina Supreme Court decided that the holding in *Martinez* would not provide good cause because it is inapplicable

in state court. *Kelly*, 404 S.C. at 366, 745 S.E.2d at 378.

CONCLUSION

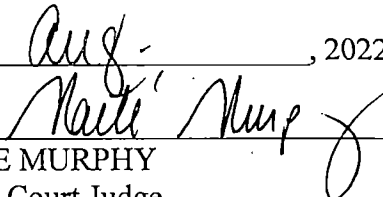
Good cause having been shown, the State's motion to dismiss the application for post-conviction relief should be and is therefore granted, and the application is dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his PCR attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. *Austin v. State*, 305 S.C. 453, 454-55, 409 S.E.2d 395, 396 (1991).


IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of Aug, 2022.



MAITE MURPHY
Circuit Court Judge


_____, South Carolina

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OCT 31 2022
S.C. SUPREME COURT

The Honorable Patricia A. Howard, Clerk
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