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JUN 10 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Arthur Hamilton Young, )  
S.C.D.C. No. 104491, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2012-CP-23-5181

S.C. SUPREME COURT

**CONDITIONAL ORDER OF DISMISSAL**

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FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. CKENSIER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 10, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2005 term of General Sessions for first-degree burglary (2005-GS-23-2123). Dorothy A. Manigault, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On March 13, 2009, the Honorable Roger L. Couch sentenced the Applicant to life imprisonment without parole.<sup>1</sup>

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

<sup>1</sup> After the imposition of sentence, the State not prossed indictments for second-degree arson (2005-GS-23-1180) and breach of trust (2006-GS-23-1278) and a warrant for distribution of methamphetamine (I-797386).

Anders<sup>2</sup> brief. The Court of Appeals dismissed the appeal. State v. Young, Op. No. 2009-UP-476 (S.C. Ct. App. filed October 13, 2009).

The Applicant filed a PCR application on November 9, 2009 (2009-CP-23-9466). The Applicant raised the issue of ineffective assistance of counsel. In a document captioned "Amended PCR" and dated April 29, 2010 – which was prepared by the Applicant and filed by PCR counsel – the Applicant made the following additional allegations:

1. Ineffective assistance of counsel:
  - a. Failed to object to the use of the two prior convictions in serving notice of intent to seek life imprisonment without parole.
  - b. Failed "to suppress the preliminary hearing tapes and written testimony from the victim."
  - c. Conflict of interest.
  - d. Failed to investigate.
  - e. Failed to request a charge of second-degree burglary.
2. Prosecutorial misconduct.

An evidentiary hearing was convened on November 18, 2010 at the Greenville County Courthouse. Rodney W. Richey, Esquire represented the Applicant. The Honorable Robin B. Stilwell denied and dismissed the PCR application by order filed February 1, 2011.

The Applicant filed a notice of appeal. LaNelle C. DuRant, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson<sup>3</sup> petition. The South Carolina Supreme Court denied the petition for writ of certiorari on July 16, 2012.

## II.

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

1. Ineffective assistance of PCR counsel:
  - a. Failure to file a Rule 59(e), SCRCP motion.

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<sup>2</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

<sup>3</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

2. Denial of due process.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads 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 upon an appeal, whichever is later.

The Applicant was convicted of the offense he challenges in this application on March 13, 2009 and the South Carolina Court of Appeals dismissed the appeal on October 13, 2009. The Applicant was therefore required to file his application before October 13, 2010. This application was filed on August 10, 2012, which was more than one year and nine months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for

post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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 point to 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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 Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

#### V.

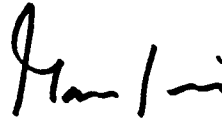
This Court finds the Applicant’s contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v.

Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 25<sup>TH</sup> day of FEB., 2013.



\_\_\_\_\_  
D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.

# 104491  
Mr. Arthur H. Young

S.C. D.C. F1A180

386 Redemption way

McCormick, S.C.  
29899

Supreme Court of South Carolina

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Department of Corrections has not censored this item. Therefore the Department does not assume the responsibility for its contents.

Mr. Daniel E. Shearouse Clerk of Court  
Post office Box 11330  
Columbia, South Carolina  
29211

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JUN 22 2013

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