



ALAN WILSON
ATTORNEY GENERAL

December 22, 2022

The Honorable Sue K. Carpenter
Chester County Clerk of Court
PO Drawer 580
Chester, SC 29706-0580

FILED
2022 DEC 29 A 10:23
CLERK OF COURT
CHESTER CO S.C.

Re: Bobby Ray Gladden, #231803 v. State of South Carolina
Case No: ~~2019~~ CP-12-00366

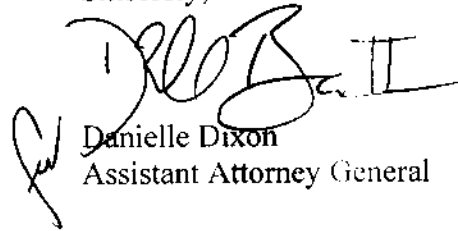
2022

Dear Ms. Carpenter:

Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable Brian M. Gibbons, in the above-captioned case, for filing in your office.

In addition, please forward a time stamped copy back to our office for our file in the self-addressed stamped envelope enclosed for your convenience.

Sincerely,


Danielle Dixon
Assistant Attorney General

DD/sce

Enclosures

counsel was ineffective for:

- a. Failing to procure an independent expert for a competency evaluation;
- b. Failing to request a jury charge on accident;
- c. Was incompetent or lacked understanding while giving statements to law enforcement;
- d. Failing to cross-examine Dr. Sexton; and
- e. Objecting to report from SCDDSN.

On November 16, 1999, Justice Pleicones denied and dismissed the application with prejudice. Applicant filed a timely notice of appeal. The South Carolina Supreme Court initially granted Applicant's petition for a writ of certiorari but later dismissed certiorari as improvidently granted. Gladden v. State, 2002-MO-055 (S.C. Sup. Ct. filed July 16, 2002). The remittitur was sent August 2, 2002.

On March 2, 2004, Applicant filed a second PCR application (2004-CP-12-0096). In his application, he set forth the following grounds for relief:

1. Ineffective assistance of counsel
2. Ineffective assistance of appellate counsel
3. Trial court lacked subject matter jurisdiction.

On March 3, 2005, a hearing convened before the Honorable Paul M. Burch. On April 19, 2005, Judge Burge denied and dismissed the application with prejudice, finding the application was successive and barred by the one-year statute of limitations.

On June 6, 2012, Applicant filed a Petition for Writ of Habeas Corpus in the State Court (2012-CP-12-00294). In his petition, Applicant averred he pled guilty prior to trial but withdrew the plea. He contended the guilty plea appeared on the face of the indictment and was prejudicial to him. On April 8, 2013, the Honorable J. Ernest Kinard issued an order denying the application and dismissing it with prejudice.

On May 7, 2013, Applicant filed his third PCR application, alleging



1. "Violation of the U.S. and S.C. Constitution, Due Process of Law rights, 6th & 14th Amend. and other law(s).
 - a. "Indictment (No. 95-GS-12-226) contained on it's face a signed and dated guilty plea. ... Therefore, by and for the above facts/reference/law, where a guilty plea on the indictment violated evidence rule 410, it may have improperly influenced, and the results may have been different, and was prejudicial. Applicant was denied effective assistance of counsel...by trial and/or appeal counsel's failure to object or raise the issue."
2. "Abridgement of a state created right. S.C. Rules of Evidence, Rule 410."
3. "Jurisdictional defect in the proceedings." Guilty Plea on Indictment, at trial.
4. "Evidence of material facts not previously presented and heard thereby requiring vacation of the conviction in the interest of justice. (1), (2), (3), adopted above."
5. Denial of due process.

On January 30, 2014, the Honorable Brian M. Gibbons issued a conditional order of dismissal granting Applicant twenty days to respond and show why the order should not become final. On December 3, 2014, Judge Gibbons issued a final order of dismissal. Applicant timely appealed, and the South Carolina Supreme Court issued an order dismissing his appeal on February 19, 2015. The remittitur was sent March 9, 2015.

II. Current Application

Applicant *untimely* commenced this fourth PCR action on August 22, 2022. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

- a. Trial court lacked jurisdiction to convict for murder when there was no indictment charging murder: indictment reads he killed Barbara Gladden and makes no reference to a statute or the common law;
- b. Trial court did not instruct jury on criminal intent.

As relief, Applicant requested his sentence and conviction be vacated. On September 9, 2022, Applicant filed an amended application alleging "the indictment for murder is fatally defective because the body of the indictment omit [sic] the word Murder from its construction." Attached



to Respondent's return and motion to dismiss are the Chester County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior PCR actions. This Court has reviewed these materials before issuing this Order.

III. Findings of Fact and Conclusions of Law

The State moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, asserting there are no genuine issues of material fact that would necessitate an evidentiary hearing. Because there are no questions of law or fact to necessitate a hearing, the State requested the Court not appoint counsel in this matter and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 ("If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations."); Rule 71.1(d), SCRCF (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing).

This Court has reviewed the application and the records in this case and finds there are no genuine issues of material fact. Therefore, summary dismissal is appropriate. Set forth below are the Court's findings:

A handwritten signature in black ink, consisting of a large, stylized letter 'B' with a loop at the bottom.

i. Statute of Limitations

This Court finds Applicant's application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.¹ Pursuant to the Act, a PCR application "must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur." § 17-27-45(A). The statute of limitations applies to all PCR applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). The circuit court may "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." § 17-27-70(c).

Here, Applicant was sentenced on March 21, 1996. He filed a direct appeal, and the remittitur was sent February 27, 1998. The PCR application was therefore due on or before February 27, 1999. This application was filed on August 22, 2022—well after the requisite filing period expired. Accordingly, Applicant's application shall be summarily dismissed as untimely.

ii. Successive

This Court finds Applicant's current application should be summarily dismissed as successive. Courts disfavor successive applications and place the burden on applicants to establish that any new ground could not have been raised in a prior 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).

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

¹ S.C. Code Ann. § 17-27-10 to -160.



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. Successive PCR actions are barred unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Id. PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 394. Thus, 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. 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).

Here, Applicant's current allegations were or could have been raised in a prior PCR application. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his prior applications and has thus failed to meet his burden of showing the allegations could not have been previously raised. Accordingly, this application shall be summarily dismissed as successive.

IV. Conclusion

WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code, this 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 (20) 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, factual or legal, with the Chester

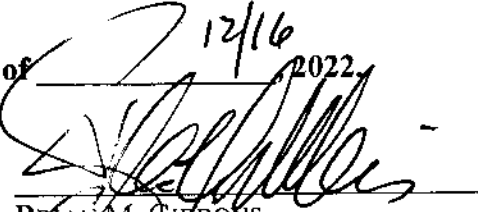


County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Danielle Dixon, Esquire
PCR Division – Sixth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Chester County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 7 day of 12/16 2022.


BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit


_____, South Carolina

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CLERK OF COURT
SIXTH JUDICIAL CIRCUIT