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S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

September 2, 2021

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Charleston County Judicial Center
100 Broad Street, Suite 368
Charleston, SC 29401

Re: Gerald Edwards, #173780 v. State of South Carolina
Case No.: 2021-CP-10-2522

Dear Judge Young:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's Return and Motion to Dismiss have also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Charleston County Clerk of Court for filing with the enclosed envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lauren T. Mims
Assistant Attorney General

LTM/vh
Enclosure(s)

cc: Gerald Edwards, #173780

AH
GS
SQL
AG

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Gerald Edwards, #173780)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2021-CP-10-2522

CONDITIONAL ORDER OF DISMISSAL

2022 MAY 23 AM 7:45
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter is before the Court by way of an application for Post-Conviction Relief (PCR) filed by Gerald Edwards (Applicant) on May 24, 2021. In its Return and Motion to Dismiss, Respondent requested the action be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2014 term, the Charleston County Grand Jury indicted the applicant for armed robbery (2014-GS-10-01779) and possession of a weapon during the commission of a violent crime (2014-GS-10-01780). Initially, the Applicant was represented by Shirene Hansotia, but proceeded to trial *pro se*. Chad Simpson of the Ninth Circuit Solicitor's office prosecuted the case. On February 10, 2015, Applicant proceeded to a jury trial, where he was found guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced Applicant to confinement for twenty years for armed robbery and five years for possession of a knife during the commission of a violent crime, to be served concurrently.

Direct Appeal

Applicant filed a *pro se* notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal as a result of his failure to serve a timely notice of appeal. *State v. Edwards*, S.C. Ct. App. Order dated March 11, 2015. In a series of correspondences between March 19, 2015, and April 9, 2015, Applicant made a motion to reinstate the appeal. The State made a return

trial transcript, the records from Applicant's prior PCR actions, and appellate records and records of this PCR action.

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 and all relevant supporting documents. Pursuant to South Carolina Code Sections 17-27-70 and -80, this court informs the parties of its intent to dismiss no genuine issue of material which would necessitate an evidentiary hearing. *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) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

This Court finds this application for post-conviction relief should 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 (2014). Specifically, the act requires as follows:

- (A) 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.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the application contends that there is evidence of material facts not previously presented and heard that required vacation of the conviction or sentence, the application must be filed



under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Id. §§ 17-27-45(A)-(C).

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. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, subsection 17-27-70(c) of the South Carolina Code 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.”

In the present case, Applicant is alleging that he is entitled to post-conviction relief because he was denied counsel despite Applicant’s request. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. §17-27-45. Based on *Peloquin*, Applicant was convicted on February 10, 2015 and pursued a direct appeal. The Remittitur was issued October 22, 2015. Pursuant to section 17-27-45(A), Applicant needed to file his application on or before October 22, 2016. Furthermore, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant’s current PCR application as he alleges no new rights based on a change of law or statute to be applied retroactively or is not newly discovered evidence. The current application was not filed until May 24, 2021, well after the statutory filing period expired. Accordingly, this application is untimely pursuant to section 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Relief Act.

Successive Applications

The Court further finds that this application should 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).

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-

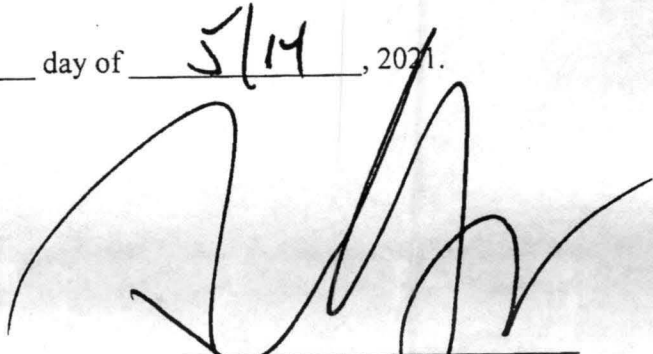
conviction relief or his *White* appeal. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR application.

CONCLUSION

Pursuant to subsection 17-27-70(b) of the South Carolina Code (2014), 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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lauren Mims, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of 5/14, 2021.



THE HONORABLE ROGER M. YOUNG SR.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina.