

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Sandy Locklear, #360304,
Applicant,

Case No.: 2021-CP-26-7958

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

FILED
HORRY COUNTY
2023 APR 28 P 3:43
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed December 10, 2021. Respondent made its return and motion to dismiss on February 14, 2022. A conditional order of dismissal was filed on March 2, 2022. By letter dated June 23, 2022, the Court declined to sign the final order of dismissal and requested a hearing on the motion to dismiss be held. A hearing on the State's motion to dismiss was held on January 5, 2023. James K. Falk, Esquire, represented Applicant. Chelsey F. Marto, Esquire, represented Respondent.

After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet her requisite burden of proof of establishing she is entitled to a full evidentiary hearing. Accordingly, this Court summarily dismisses the application without a full evidentiary hearing. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections. Applicant was indicted for two counts of murder at the January 2013 term of the Horry County Grand Jury. (2013-GS-26-00302; -00304). Applicant was represented by Attorney Ralph Wilson, Jr., and Assistant Solicitors Bradley Richardson and Monica Wooten, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 28, 2014, Applicant proceeded to a jury trial

before the Honorable Benjamin H. Culbertson. The jury convicted Applicant, as indicted, on June 12, 2014. Applicant was sentenced to two concurrent terms of life imprisonment.

Applicant appealed and the appeal was perfected by Attorney Edwin Thompson Kinney.

Applicant presented three issues:

1. Whether the court erred in ruling that [Applicant] was not in custody prior to being read her *Miranda* rights and in allowing the [Applicant's] pre-*Miranda* statement to be admitted into evidence?
2. Whether the court erred in ruling that the State did not violate the rule set forth in *Missouri v. Seibert*?
3. Whether the court erred, thereby violating the Fourth Amendment and the [Applicant's] right to privacy, when it upheld a search warrant on the home at 509 Fair Bluff Road?

The parties proceeded to oral arguments on May 3, 2016. The South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Locklear*, Op. No. 2016-App. Filed June 22, 2016). The remittitur was issued on July 20, 2016.

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First PCR Application: 2017-CP-26-00147

Applicant filed her first application for post-conviction relief on January 12, 2017. In her application she alleged she was being held in custody unlawfully for the following reasons:

1. State failed to prove *mens rea* or malice aforethought necessary to charge jury on murder charges.
 - a. There is nothing in the record to prove beyond a reasonable doubt that I had any knowledge of or part in murders beyond speculation.
2. Lack of direct or substantial circumstantial evidence proving murder.
 - a. Not one scintilla of evidence direct or circumstantial.
 - b. Evidence is inconsistent with jury's findings, State's case is based on conjecture.
3. State failed to meet burden of proof for 'hands of one, hands of all'
 - a. At no time did other co-defendants make any statement to implicate me in the murders in any way.
4. Appellate counsel, Edwin Thompson Kinney, appointed to me through

Indigent Appellate Defense, provided ineffective assistance of counsel for [failing] to raise the issues listed in this brief during appeal. These issues were [preserved in] the record of trial by my defense attorney, Ralph Wilson, Jr. during the criminal proceedings.

Respondent made its return on December 15, 2017 and requested an evidentiary hearing. A hearing was convened on November 27, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was represented by Attorney James K. Falk and Assistant Attorney General Johnny James, Jr., of the South Carolina Attorney General's Office represented Respondent. On May 9, 2019, the Honorable Kristi F. Curtis denied relief and dismissed the application via written order.

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Applicant appealed and the appeal was perfected by Attorney Kathrine H. Hudgins. Applicant, through counsel, filed a *Johnson* petition for writ of certiorari and raised the following issue:¹

Was appellate counsel ineffective in failing to challenge on direct appeal the trial judge's refusal to direct a verdict of acquittal for murder?

The case was transferred to the South Carolina Court of Appeals, which denied the petition for writ of certiorari on September 28, 2021. The remittitur was issued on October 22, 2021.

Statement of Facts

On August 19, 2012, at 4:00 am, officers were called to the victims' home after Applicant, on a 911 call originating from the home, reported the murders and that she had been raped. (Tr. 331, 21 – Tr. 333, 18; Tr. 356, 12-14). Responding officers noticed the back door was open, saw a body face down in the living room, and, upon entry saw another body face down on the kitchen floor. (Tr. 337, 3 – Tr. 338, 6). Each victim had been shot in the head through a

¹ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988)

pillow. (Tr. 623, 7 – Tr. 624, 4; Tr. 631, 17 – Tr. 632, 22; Tr. 635, 13 – Tr. 636, 7; Tr. 1007, 2-14).

Officers heard a female voice from elsewhere in the trailer and found Applicant in a bedroom. Officer Tindall testified he helped Applicant out of the residence. (Tr. 338, 17 – Tr. 339, 4). She told him two males entered the home, struck her in the head with a long gun and raped her in the kitchen. He testified he escorted her to a police car and asked if she was okay, she needed medical treatment. (Tr. 341, 20 – Tr. 343, 8).

The lead detective, Detective Frebowitz, arrived around 4:30 am. He also checked on the Applicant, still thinking her to be victim. He testified that she told him that she had been raped, and he said they had to get her to the hospital “because [her] safety and welfare is ... most important....” (Tr. 432, 21-25; Tr. 434, 15 – Tr. 437, 23). She was taken to the hospital.

At the hospital, Applicant maintained she had been vaginally penetrated twice. (Tr. 770, 15-22). She gave a similar statement to the rape crisis center. (Tr. 364, 13 – Tr. 366, 22).

Detective Frebowitz testified that later that same morning, he went to the hospital and spoke with Applicant. She again “reiterated that she was a victim of a sexual assault.” (Tr. 24, 2-20).

Applicant was then transported to the detention center. Detective Frebowitz testified she was not handcuffed or restrained because she was considered a victim and a witness to the murders. (Tr. 25, 19 - Tr. 26, 1). During the interview she began to make inconsistent statements and displayed no bruising to support her assertions of being hit. At the beginning of the interview, Applicant indicated once again that she had been raped by the two males who forced their way into the home. (Tr. 91, 13-24). However, the detective noted a lack of visible injury from the rapes and dragging that she described. (Tr. 490, 11 – Tr. 491, 17). After additional

questions, at approximately 11:15 am, some twenty-four minutes after beginning the interview, her story began to change. (Tr. 32, 7 – Tr. 33, 17; Court Exhibit 1; Tr. 90, 16 – Tr. 94, 20; Tr. 99, 16 – Tr. 100, 21). The detective took a break when it became apparent “she was actively attempting to deflect the truth.” He returned and gave her *Miranda* warnings at approximately 12:00 pm. (Tr. 92, 1 – Tr. 99, 25). After the *Miranda* warnings, Applicant prepared a written statement in which she maintained she was a victim. (Tr. 1448; Court Exhibit 2)

During the interview, Applicant gave permission for her cell phone records to be obtained. (Tr. 139, 23 – Tr. 140, 5). The cell phone records revealed texts that she had received and sent shortly before 3:00 am the day of the murders, concerning the back door of the home, specifically, making sure the door was unlocked for someone. (Tr. 405, 6 – Tr. 413, 17). Moreover, the records placed usage in and round the area of the home. (Tr. 413, 18 – Tr. 414, 23; Tr. 959, 14 – Tr. 962, 1 – 23). The two phones, one of which was connected to Nehemiah James Evans, were also in the same general area of a burned rental loaned to Applicant around 5:30 that same morning. (Tr. 963, 1-5). Further, a search of Mr. Evans’ home yielded a “piece of paper” with Applicant’s name and phone number along with Evans’ social security card and driver’s permit. (Tr. 966, 17 – Tr. 967, 20).

Applicant herself would later repudiate her initial story, after being confronted with the records. She offered instead that it was planned to be a robbery where no one was hurt. She indicated that she let them tie her up, and she unlocked the door for them to enter the home. (Tr. 568, 2-24; Tr. 914, 5 – Tr. 919, 21). She indicated “James” was at fault, and Odom Bryant was involved. (Tr. 512, 6 – Tr. 513, 6; Tr. 920, 13 – Tr. 924, 10).

During the investigation, Applicant’s first cousin, Faye Hunt, came to the police station having heard through family members that she was being implicated. (Tr. 773, 2-6; Tr. 781, 12 –

Tr. 782, 15). She spoke to officers and later gave a written statement on August 20, 2012. (See Court Exhibit 18). Ms. Hunt testified that she saw Applicant often during 2011, and would go out to clubs with her. (Tr. 777, 15 – Tr. 778, 10). Applicant lived in North Carolina in a home her husband had purchased for her. (Tr. 777, 4-14). Ms. Hunt testified that she had met Applicant's husband (victim Amos) at Applicant's house several time. Ms. Hunt testified that Applicant never wanted her husband to stay long – only long enough to drop off “food, cigarettes or beer.” (Tr. 779, 12-23). She recalled one day that Amos gave Applicant some insurance policies to hold. She testified Applicant stated to her “it was a million dollar policy” and that if “that son of a bitch died today I'd be a rich bitch tomorrow.” (Tr. 789, 3-4). She also advised investigators that Applicant had a small caliber pistol. (Tr. 790, 22-4). She further told investigators that Applicant had two black males at her home for lawn work. Applicant had given her lawnmower to one of the black males. Ms. Hunt testified she didn't understand why Applicant would give away such a valuable item. She also testified, though, that one of the two individuals also went inside to take a shower. (Tr. 791, 16 – Tr. 792, 4).

Clayton Hatfield, a brother to Amos, uncle to Thomas, testified that, though he lived out of state, he had stayed in touch with his brother and would visit “at least 2 or 3 times a year.” (Tr. 372, 25 – Tr. 373, 7). He testified that he was unaware that his brother had married Applicant and that he had never met Applicant. (Tr. 374, 1-16).

Further, the texts recovered from Applicant's phone records, in addition to showing a direct involvement with entry into the home, also showed Applicant's need for money. (Tr. 401, 15 – Tr. 406, 21). A search of Applicant's home yielded an accidental death policy, issued in August 2011 that had a million dollar limit under limited circumstances only explained in “small print, buried in the middle of all that paperwork.” (Tr. 837, 24 – Tr. 841, 17).

Current Action Before this Court

In her current application for post-conviction relief Applicant asserts that she is being held in custody unlawfully for the following reasons:

1. Trial Counsel failed to object to judge jury charge
 - a. *Lowry v. State*, Fed 11, 2008, 376 S.C. 499, 657 S.E.2d 760
2. Counsel rendered ineffective assistance of counsel.
 - a. *Baily v. State*, May 9, 2011, 392 S.C. 422, 709 S.E.2d 671
3. Erroneous supplemental jury instruction prejudiced defendant
 - a. *Taylor v. State*, Dec 20, 1993, 312 S.C. 179, 439 S.E.2d 820

In letter dated February 24, 2022, Applicant stated that her current allegations were not raised in the first application, nor brought to her attention until she was at her first PCR hearing. Specifically, Applicant states that Counsel was ineffective for failing to object to a supplemental instruction to the jury. She also claims ineffective assistance of PCR Counsel for failing to raise this issue. Applicant claims that she is not at fault at raising this issue in an untimely manner and, therefore, this action should not be barred by the statute of limitations.

A letter dated May 9, 2022, was sent from Applicant to the Clerk of Court, thanking the clerk's office for mailing forwarding a letter she received on March 7, 2022, to the Solicitor's Office and Public Defender's Office. In this letter, she requested a copy be sent to Judge John as well. She also asked for a status update on when she would be appointed counsel.

This Court held a hearing on the State's motion to dismiss. All other allegations raised in her initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are Applicant's Horry

County Clerk of Court's records, the records from the South Carolina Department of Corrections, records from the direct appeal including the record on appeal, records from the prior PCR, and records for the current PCR action. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Statute of Limitations

The application is 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).

Applicant was convicted on June 12, 2014, and the remittitur from her direct appeal was sent on July 20, 2016. The current application was not filed until December 10, 2021, over four years after the one-year statutory filing period expired. Therefore, the application is summarily dismissed for untimeliness.

Successiveness

The application is also 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*, 304 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 must 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, 322 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 she could not have raised her current allegations in her previous application for post-conviction relief. Therefore, she has failed to meet the burden imposed upon her, and the application shall be dismissed as successive to Applicant's previous PCR application.

Conclusion

Based on all the foregoing, this Court finds that the matter is untimely and successive and should be summarily dismissed. This Court notifies Applicant that she must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 13 day of January, 2023.

Debra R. McCaslin
DEBRA R. MCCASLIN
Presiding Judge
Fifteenth Judicial Circuit

Horry, South Carolina.

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