

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 **RECEIVED**

AUG 16 2023

SC Court of Appeals

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

in opposition to the motion to reinstate on April 17, 2015. On September 15, 2015, the South Carolina Court of Appeals denied the Applicant's motion to reinstate, stating that he failed to provide a basis for a reinstatement. The remittitur was issued on October 22, 2015.

First Post-Conviction Relief Application (2016-CP-10-2515)

Applicant commenced his first PCR action in this matter on May 13, 2016. In that action, Applicant made the following allegations:

1. "Ineffective Assistance of counsel at Trial and appeal."
  - a. "Attorney Ms. Hansotia was ineffective for failing to secure a court order relieving her as counsel appointed to represent Edwards at trial and on direct appeal which denied him of his 6<sup>th</sup> and 14<sup>th</sup> Amendment right to the effective assistance of counsel"
  - b. "Attorney Ms. Hansotia was ineffective for failing to consult with Edwards about perfecting an appeal after the court of appeals instructed her to correct deficiencies within ten (10) days of correspondence to comply within state procedural rules which denied Edwards his 6<sup>th</sup> and 14<sup>th</sup> Amendment right."
  - c. "Ms. Hansotia was ineffective for failing to assist Edwards as stand by counsel at trial where Edwards who is not skilled in the science of the law failed to make timely motions and objections at critical stages of the trial that may have changed the outcome of the trial when there exists no order relieving Ms. Hansotia as counsel of record."
2. "Denial of Direct Appeal"
  - a. "Edwards was deprived of his 6<sup>th</sup> and 14<sup>th</sup> Amendment right to effective assistance of counsel and direct appeal when Ms. Hansotia failed to correct deficiencies in Edwards' pro-se direct notice as instructed by the court of appeals which violated rules prohibiting conduct tending to pollute the administration of justice and bring the legal profession into disrepute."
  - b. "Ms. Hansotia was ineffective for refusing to comply with an obligation imposed by the court of appeals upon "good faith" belief that no valid obligation exists to correct the deficiencies in Edwards' pro-se notice of appeal when the application of legal regulations by the court of appeals went unchallenged by Ms. Hansotia."
3. "Conviction and sentence is in violation of U.S Constitution and state law."
  - a. "Edwards conviction and sentence is a result of fundamentally unfair procedure in that he was without benefit of counsel at trial and post-trial when the circuit court never issued any orders relieving Ms. Hansotia as counsel of record which violated the constitutional provision and state law where the judicial machinery broke down when Edwards' request to be appointed another counsel was denied and no assistance was given to him during trial and direct appeal."

The Respondent made its return on May 15, 2017. Rodney D. Davis, Esquire, represented Applicant. On February 1, 2018, The Honorable Michael G. Nettles dismissed Applicant's post-

conviction-relief application with prejudice. However, Judge Nettles granted the Applicant a belated review of his direct appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 34(1974).

Belated Appeal Pursuant to *White v. State*

Following Applicant's first post-conviction relief application, The Honorable Michael G. Nettles granted Applicant a belated review of his appeal pursuant to *White v. State*. On appeal, Applicant argued the trial court erred by failing to advise Applicant of the dangers of proceeding *pro se* when there was only a brief colloquy between the hearing judge and Applicant before trial and the trial judge relied erroneously on that colloquy to determine if the Applicant intelligently and knowingly waived his right to counsel pursuant to *Faretta v. California*, 422 U.S. 806, 807 (1975)

On January 20, 2021, in an unpublished opinion, the South Carolina Court of Appeals affirmed the lower court's decision and determined that the Applicant knowingly and intelligently waived his right to counsel. The remittitur was issued on February 10, 2021.

Applicant commenced this PCR action on May 24, 2021.

**CURRENT APPLICATION**

In his second and current post-conviction relief application, Applicant does not state a cognizable claim for which relief can be granted. Specifically, Applicant alleges he is being held unlawfully due to:

1. "I request counsel and the court never answered that request"

Applicant seeks a new trial with counsel.

For purposes of the Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records regarding Applicant's conviction, Applicant's SCDC records, the

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 \_\_\_\_\_, 2021.

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

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



**RECEIVED**

MAY 25 2022

GENERAL COUNSEL

ALAN WILSON  
ATTORNEY GENERAL

May 23, 2022

Barton J. Vincent, General Counsel  
Attn: Jonathan Eckstrom  
South Carolina Department of Corrections  
4444 Broad River Rd.  
Columbia, SC 29221-1787

Re: Gerald Edwards, #173780 v. State of South Carolina  
Case No.: 2021-CP-10-02522

*Melbourne CT*

Dear Mr. Vincent:

Enclosed please find the Conditional Order of Dismissal in the above-captioned inmate's post-conviction relief application. Please serve the inmate, Gerald Edwards, #173780 with the order and provide me with an affidavit of service (enclosed).

If you have any questions, please feel free to call: (803) 734-3737.

Sincerely,

Lauren T. Mims  
Assistant Attorney General

LTM/vh  
Enclosures



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

SEARCHED	INDEXED
SERIALIZED	FILED
SEP 2 2021	10 10 AM
FBI - CHARLESTON	
ADMINISTRATIVE INSTRUCTIONS	FILE
OPEN	FILE
HAVE	COPIES MADE
ROUTED	ROUTED
TRANSCRIPT	TRANSCRIPT
PEN RECORDS	CLERK RECORDS
OTHER	OTHER
Sent to LJD	
Replying to Steve	



ALAN WILSON  
ATTORNEY GENERAL

September 2, 2021

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cc: Gerald Edwards, #173780