

The State of South Carolina
For State Supreme Court

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SEP 22 2023

S.C. SUPREME COURT

Robert Campbell,

Applicant

Notice of Appeal

vs.

State of South Carolina,

Respondent

Please Take Notice, Applicant above-named files this Notice from the
order denying Post conviction relief on the 6th day of September, 2023 and received by
Applicant on the 11th day of September, 2023

Date: 19 day of September, 2023,

Respectfully Submitted,
si Robert Campbell
Robert Campbell / pro se

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Robert Bernard Campbell, #131941,)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT
RECEIVED
 Case No.: 2019-CP-23-6804 **SEP 22 2023**
 S.C. SUPREME COURT
FINAL ORDER OF DISMISSAL
 ENTERED COMPUTER

This matter comes before this Court by way of an application for post-conviction relief filed by Robert Bernard Campbell (Applicant) on November 20, 2019. The State (Respondent) made its return on or about May 15, 2020, requesting therein that the application be dismissed summarily with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its January of 1986 term, the Greenville County Grand Jury indicted Applicant for attempted armed robbery (1986-GS-23-127), housebreaking (1986-GS-23-134), strong arm robbery (1986-GS-23-135), burglary and larceny (1986-GS-23-136), two counts of burglary (1986-GS-23-125; -126), two counts of armed robbery (1986-GS-23-128; -129), two counts of aggravated assault and battery (1986-GS-23-130; -131), two counts of first-degree criminal sexual conduct (1986-GS-23-132; -133). Applicant was represented by William Banks Long, Jr., Esquire. On February 28, 1986, Applicant appeared before the Honorable Jonathan Z. McKown and pleaded guilty to attempted armed robbery, first-degree criminal sexual conduct, housebreaking, two counts of burglary, and two counts of armed robbery. In accordance with the plea agreement, the State dismissed the remaining indictments. Judge McKown sentenced Applicant to imprisonment for life for each count of burglary, for ten years for

attempted armed robbery, for twenty-five years for each count of armed robbery, for thirty years for first-degree criminal sexual conduct, and for ten years for housebreaking.

At that time, Applicant did not appeal his convictions or sentences.

On January 8, 2015, Applicant moved for resentencing pursuant to Miller v. Alabama, 567 US. 460 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Applicant was represented for the purpose of that motion by Parker A. Baxley, Esquire, and the State was represented by Assistant Solicitor Elizabeth Morrow Gary of the Thirteenth Circuit Solicitor's Office. On November 21, 2016, the Honorable R. Keith Kelly issued an order denying Applicant's motion. Applicant filed a timely notice of appeal of that order. Appellate Defender Joanna Katherine Delany of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Assistant Attorney General Mark R. Farthing of the South Carolina Attorney General's Office represented the State. Delany argued on appeal that Judge Kelly erred in denying the motion for resentencing because Applicant's sentence of imprisonment for life with the possibility of parole is the functional equivalent of imprisonment for life without the possibility of parole due to Applicant's mental illness and lack of legal representation at parole hearings and due to the parole board's not being required to consider the special characteristics of a juvenile offender. The South Carolina Court of Appeals affirmed. State v. Campbell, Op. No. 2019-UP-332 (S.C. Ct. App. filed October 9, 2019) (per curiam). The remittitur was issued on October 25, 2019.

1999-CP-23-982

Applicant filed an application for post-conviction relief on February 25, 1999, arguing therein that he was entitled to post-conviction relief based upon the following grounds:

1. All statements, comments, and confessions were taken and used without Miranda¹ warnings and by unlawful coercion, violating Applicant's rights under the Fourth,

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

- Fifth, Sixth, and Fourteenth Amendments to the United States Constitution;
2. Applicant was denied the effective assistance of counsel; and
 3. "Court lacked jurisdiction violations 4th, 5th, 6th, and 14th USCA amendments Section (10)".

Respondent filed its return on July 1, 1999, and moved therein for the summary dismissal of the application as being procedurally barred by the statute of limitations. On August 10, 1999, the Honorable Joseph J. Watson issued a conditional order of dismissal. On December 19, 2001, a hearing was convened at the Greenville County Courthouse before the Honorable John W. Kittredge. Applicant was represented by Symmes W. Culbertson, Sr., Esquire. On February 15, 2002, Judge Kittredge issued an order dismissing summarily the application as barred by the statute of limitations.

Culbertson filed a timely notice of appeal. Appellate Defender Eleanor Duffy Cleary represented Applicant on appeal. Cleary filed a motion to be relieved as counsel and a petition for a writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied the petition.

2008-CP-23-8452

Applicant filed his second application for post-conviction relief on November 11, 2008, arguing therein that he was entitled to post-conviction relief based upon the following grounds:

4. "Attorney misconduct and representation"; and
5. "False evidence and (no) DNA testing."

Respondent made its return on or about March 3, 2009, moving therein for the summary dismissal of the application as being barred by the statute of limitations, the presumption against successive applications, and the doctrine of laches. The Honorable John C. Few issued a conditional order of dismissal, which was filed on July 29, 2019. The Honorable Edward W. Miller issued a final order of dismissal, which was filed on April 19, 2012, summarily dismissing the application.

Applicant did not appeal the denial of his second application.

0:10-671-JFA-PJG

Applicant then filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina. Respondent moved for summary judgment on June 28, 2010. The Honorable Paige J. Gossett, United States Magistrate Judge, issued a report and recommendation on August 23, 2010, recommending that Respondent's motion for summary judgment be granted. On November 28, 2010, the Honorable Joseph F. Anderson, Jr., United States District Court Judge, issued an order granting Respondent's motion for summary judgment, denying all motions made by Applicant, and declining to grant a certificate of appealability.

In re Robert Campbell, No. 11-223

On June 23, 2011, Applicant moved before the United States Court of Appeals for the Fourth Circuit for an order authorizing the United States District Court for the District of South Carolina to consider a second or successive application under 28 U.S.C. § 2244. The Court of Appeals denied Applicant's motion in an order issued on July 25, 2011.

2013-CP-23-1870

Applicant filed his third application for post-conviction relief on April 2, 2013, arguing therein that he was entitled to post-conviction relief based upon the following grounds:

6. Applicant received the ineffective assistance of counsel because he "would not have given up his rights to plea guilty had counsel advised him he's pleading guilty to life";
7. Applicant's guilty pleas were involuntary because Applicant:
 - a. "[A]sserts mental retardation";
 - b. "[W]as under psychiatric care"; and
 - c. "[W]as on medication at the time of the guilty plea"; and
8. The trial court lacked the subject matter jurisdiction to impose sentences for burglary.

Respondent made its return on or about September 19, 2013, moving therein for the summary dismissal of the application as being barred by the statute of limitations, the presumption against successive applications, and the doctrine of laches. The Honorable D. Garrison Hill issued a

conditional order of dismissal, which was filed on October 1, 2013. Applicant filed a notice of appeal with the South Carolina Court of Appeals on October 21, 2013. The Court of Appeals transferred the appeal to the South Carolina Supreme Court on October 22, 2013. The Supreme Court dismissed the appeal without prejudice because Applicant was attempting to appeal from a conditional order of dismissal, which is not an appealable order. Campbell v. State, S.C. Sup. Ct. Order filed October 31, 2013 (citing Lewis v. State, 368 S.C. 630, 630 S.E.2d 464 (2006)). The remittitur was issued on November 15, 2013.

Judge Hill issued a final order of dismissal, which was filed on December 9, 2013, denying the application for post-conviction relief.

Applicant filed a second notice of appeal. The South Carolina Supreme Court dismissed the appeal and found Applicant had not met his burden pursuant to Rule 243(c), SCACR, in showing the summary dismissal of his application was improper. Campbell v. State, S.C. Sup. Ct. Order filed March 20, 2014. The remittitur was issued on April 7, 2014.

2015-CP-23-2628

Applicant filed his fourth application for post-conviction relief on April 20, 2015, arguing therein that he was entitled to be resentenced in accordance with Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Respondent filed its return on September 28, 2015, moving for the summary dismissal of the application as being barred by the statute of limitations and as being the improper court to hear the Aiken claim. The Honorable Robin B. Stilwell issued a conditional order of dismissal on October 13, 2015. Applicant filed a response to the order, arguing, among other things, that he was taking medication at the time he entered his guilty pleas and that he did not understand what he was doing. On February 9, 2016, Judge Stilwell issued a final order of dismissal, summarily dismissing the application with prejudice.

Applicant did not appeal the denial of post-conviction relief.

In re Robert Campbell, 2010-155607

Applicant filed a petition with the South Carolina Supreme Court, wherein he requested that the Supreme Court consider the petition in its original jurisdiction. The Supreme Court dismissed the matter and, recognizing “the repetitive and frivolous nature of petitioner’s numerous petitions,” directed the Clerk of Court to decline to accept further petitions from Applicant unless he paid the required filing fee and ordered that any future petition filed by Applicant be accompanied by a notarized affidavit certifying that he believes in good faith that the matter raised is not frivolous and would be properly considered by the Supreme Court in its original jurisdiction. In re Robert Campbell, S.C. Sup. Ct. Order dated April 10, 2015.

In re Robert Campbell, No. 15-181

On May 14, 2015, Applicant moved before the United States Court of Appeals for the Fourth Circuit for an order authorizing the United States District Court for the District of South Carolina to consider a second or successive application under 28 U.S.C. § 2244. The Court of Appeals denied Applicant’s motion in an order issued on May 21, 2015.

2015-002538

Applicant filed a motion for resentencing with the South Carolina Supreme Court. The Supreme Court denied Applicant’s request that the filing fee be waived, struck the matter, and dismissed the matter due to Applicant’s failure to pay the required filing fee. Campbell v. State, S.C. Sup. Ct. Order filed December 29, 2015.

CURRENT APPLICATION

In his fifth and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully because (1) a DNA test was not performed and he can prove his

innocence therewith and (2) he was taking medications before and after his sentencing, which prevented him from understanding what he was doing when he pleaded guilty. Applicant prays the Court would grant post-conviction relief by writing the following: "corrective my sentencing / time served / vacate sentence. Drop these other charges off me and my Record."

Before this Court are the records of the Greenville County Clerk of Court regarding Applicant's convictions; the records from Applicant's Aiken appeal; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's prior post-conviction relief actions and appeals; the records from Applicant's petition for a writ of habeas corpus in federal court; and this fifth and current application for post-conviction relief and Respondent's return thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court finds the application shall be summarily dismissed.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact . . ." and the movant is entitled to judgment as a matter of law. Summary dismissal without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

First, this present application for post-conviction relief shall be dismissed summarily for its non-compliance with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (the Act). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

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 offense 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). One who was convicted and sentenced prior to the effective date of the statute of limitations must file the application within one year of the effective date of the statute, which was July 1, 1995. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996) (per curiam). Applicant did not appeal his convictions or sentences, and he was convicted and sentenced on February 28, 1986. The application was, therefore, due on or before July 2, 1996. This application was not filed until November 20, 2019, more than twenty-three years after the statutory filing period expired. Therefore, the application shall be dismissed summarily for Applicant's failure to file within the time mandated by Act and by Peloquin. Id.

Second, this present application for post-conviction relief shall be dismissed summarily because it is a successive 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 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" that new grounds 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 the 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 claims he is entitled to post-conviction relief because a DNA test was not performed in his case. Not only could Applicant have raised this claim in a previous PCR action, but he did in fact do so. Applicant raised this claim in his second PCR action, and was not successful thereupon. Applicant also claims that he is entitled to post-conviction relief because he was taking medications that prevented him from understanding what he was doing when he pleaded guilty. Again, Applicant could have raised this claim previously and did so, in his third PCR action. Therefore, Applicant has failed to meet the burden imposed upon him, and this Court shall dismiss the application summarily for its being successive.

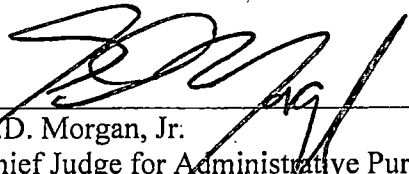
Third, this Court shall dismiss summarily the application because the claims raised therein are barred by the doctrine of res judicata. Res judicata prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (S.C. Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new

has not stated any basis to the extent to overcome a cognizable claim pursuant to S.C. Code Ann. §17-27-20(B).

CONCLUSION

The Applicant has failed to produce any specific factual or legal reason why the Conditional Order should not become final. Therefore, the respondent motions this Court to order a Final Order of Dismissal and dismiss the application with prejudice.

AND IT IS SO ORDERED this 5th day of September, 2023.



G.D. Morgan, Jr.
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to
Attorney General / PH. Pro-Se
on 9 / 6 / 2023