

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vernon T. Harrison, #333555,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2023-CP-40-00434
)

) **CONDITIONAL ORDER OF DISMISSAL**
)

FILED
2023 JUN -8 PM 1:01
RICHLAND COUNTY
COURT OF COMMON PLEAS
C.C.P., Q.S., & E.C.

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Vernon T. Harrison (Applicant) commenced on January 26, 2023. In response, Respondent made its return and moved to summarily dismiss the action as procedurally barred as successive to Applicant's previous PCR application and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014). Respondent respectfully offers the following in support of its return and motion to dismiss:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined with the South Carolina Department of Corrections (SCDC) following his conviction in Richland County.

CONVICTION AND SENTENCE

Applicant was indicted at the January 2008 term of the Richland County Grand Jury for Murder (2008-GS-40-12141). Applicant was represented by Deon O'Neil, Esquire, and Nicole Singletary, Esquire, both Assistant Public Defenders for Richland County. Fifth Circuit Assistant Solicitors Luck Campbell and Aaron Joplin prosecuted the case.

On March 9, 2009, Applicant waived his right to a trial by jury and pled guilty to the lesser included offense of Voluntary Manslaughter before the Honorable J. Michelle Childs, Circuit

Court Judge. Judge Childs sentenced Applicant to thirty years confinement for the voluntary manslaughter conviction.

Applicant did not pursue a direct appeal.

INITIAL PCR ACTION AND APPEAL: 2010-CP-40-1553

Applicant subsequently filed his *first* application for post-conviction relief on March 8, 2010, in which he alleged the following grounds for relief:

1. Richland County, General Sessions Court, Lacked Subject Matter Jurisdiction¹

An evidentiary hearing in this PCR action was held before the Honorable James R. Barber, Circuit Court Judge, on August 29, 2011. Applicant was present and was represented by Charles T. Brooks, III, Esquire. Assistant Attorney General Brian Petrano represented the State. Judge Barber denied Applicant application for PCR by filed Order of Dismissal on December 14, 2011.

Applicant timely served and filed a notice of appeal on December 13, 2011. On appeal, Applicant was represented by Robert M. Pachak, Appellate Defender with the South Carolina Commission on Indigent Defense, Division of Appellate Defense. On April 30, 2012, Applicant's appeal to the PCR court's Order was perfected with the filing of a Johnson² Petition for Writ of Certiorari. On July 15, 2012, Applicant filed a *pro se* Petition for Writ of Certiorari.

By Order filed April 5, 2013, the PCR appeal was dismissed by the South Carolina Supreme Court. The Remittitur was returned on April 23, 2013.

FEDERAL HABEAS ACTION: 4:13-1004-TLW-TER

¹ The allegations set forth are not verbatim. Applicant filed a lengthy attachment listing his allegations to his original application for PCR and those are provided in this packet for this Court's review.

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

On April 10, 2013, Applicant filed a federal *habeas* action alleging the following:

Ground One: Ineffective Assistance of Counsel

Supporting facts: Counsel never told me about the Protection of Persons and Property Act if I had known about it I would have gone to trial being that I was attacked in my home. Considering Solicitor Joplin's statement on the facts (App. p. 27, Line 14 – p. 28 Line 15) I clearly was not the aggressor.

The State filed its Motion for Summary Judgment and its Return and Memorandum of Law in Support of Motion for Summary Judgment on January 23, 2014. On January 27, 2014, United States Magistrate Judge Thomas E. Rogers, III, issued a Roseboro³ Order. On April 7, 2014, Applicant filed Petitioner's O[b]jection to Respondent's Motion for Summary Judgment with attachments. On April 30, 2014, Magistrate Judge Rogers issued his Report and Recommendation recommending that the motion for summary judgment be granted, Applicant's Petition for Writ of *Habeas Corpus* be denied, and the petition dismissed without an evidentiary hearing.

On May 23, 2014, Applicant filed Petitioner's Objection to the Magistrate Judge's Report and Recommendation. On June 27, 2014, Chief United States District Judge Terry L. Wooten issued an order accepting the Report and Recommendation granting the motion for summary judgment and denying and dismissing Applicant's Petition for Writ of *Habeas Corpus* without an evidentiary hearing.

On June 14, 2014, Applicant filed a motion captioned "Rule 59, 60 Error by the Court." On September 9, 2014, District Judge Wooten issued an Order denying Applicant's motion to reconsider. On October 16, 2014, Applicant filed a Notice of Appeal. On October 17, 2014, the Fourth Circuit Court of Appeals remanded the case to the district court to supplement the record with an order granting or denying the certificate of appealability. On October 13, 2014, District

³ Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975)

Judge Wooten issued an order denying the certificate of appealability.

On October 27, 2014, the Fourth Circuit Court of Appeal issued an Informal Preliminary Briefing Order. On November 25, 2014, Applicant filed his Informal Opening Brief. On January 27, 2015, the Fourth Circuit Court of Appeals dismissed Applicant's appeal by unpublished per curiam opinion. Harrison v. Stevenson, Unpub. Op. No. 14-7522.

CURRENT ACTION BEFORE THIS COURT

In Applicant's *second* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. "Lack of Subject-Matter Jurisdiction of Court"⁴
 - i. S.C. Code Ann. § 14-5-670(2)

Applicant requests relief in the form of "I want my sentence vacated, and I will negotiate from there."

Attached to Respondent's return and before this Court are the Richland County Clerk of Court records regarding the subject's convictions; Applicant's records from the South Carolina Department of Corrections; records from Applicant's first PCR and appeal; records from Applicant's *habeas*; and the records of the current 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. Pursuant to South Carolina Code Annotated §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b)

⁴ The allegations are not listed verbatim as Applicant filed a verbose memorandum to support his application for PCR.

(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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

LACK OF SUBJECT MATTER JURISDICTION

Applicant alleges the court did not have subject matter jurisdiction over his charges, and this Court finds this allegation is without merit.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Additionally, A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in §§ 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). Furthermore, a presumption of regularity is attached to proceedings in the Court of General

Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Applicant's indictments are valid on their face because they state all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40.

Accordingly, this Court finds Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation must be summarily dismissed.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss the application because it is successive to the previous application(s) for post-conviction relief. 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). Importantly, S.C. Code Ann. § 17-27-90 provides:

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.

Pursuant to 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. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). In Aice, the South Carolina Supreme Court held that PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Id. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality 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.

Expressly, 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 may not raise those grounds in successive applications. Id. Notably, the 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 Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) ("Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple as it were.' A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application."). Here, Applicant is unable to show that these claims could not have been raised in his initial application, as his claims were known and easily could have and should have been raised in his initial post-conviction relief action.

Accordingly, this Court finds the application should be dismissed as successive to Applicant's prior post-conviction relief actions.

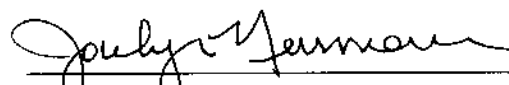
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the 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 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 with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – D. Russell Barlow, II
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty days, 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 7th day of June, 2023.



JOCELYN NEWMAN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina