

The Supreme Ct. Clerk
Mr. Daniel E. Shearouse
PO BOX 11330
Cola. SC 29211

Re # 2010-CP-33-034

RECEIVED

AUG 07 2013

S.C. SUPREME COURT

Date

Dear Hon. Clerk Shearouse

- Please be advised as of this date I am sending you the following into you requested
- (1) proof of service showing my notice of appeal was filed on opposing counsel.
 - (2) Copy of final order
 - (3) copy of conditional order of dismissal

SWORN to and subscribed before me

This 2 day of August

Joyce L. Young
Notary Public

My Commission Expires

10/1/2021

(SEE Proof of service on back)

sp Perry Young # 252478

PROOF OF SERVICE

I Perryyoung #252478 certify that I have
sent/served the S.C. Supreme Ct. Clerk Mr.

Daniel E. Shearouse at P.O. Box 11330

Colo SC, 29211 my letter dated August 2, 2013
and the all attachments stated in said letter.

By placing the above said into the MC Corr.
Inst. mail room on this 2 day of August
to be placed in the U.S. mail with postage prepaid.

SUBORN to before me
this 2 day of August

sp Perryyoung #252478

Notary Public
my Commission Expires



ALAN WILSON
ATTORNEY GENERAL

October 28, 2011

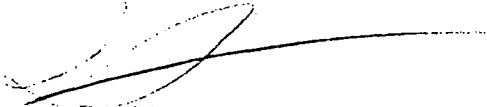
The Honorable Michael G. Nettles
12th Judicial Circuit
180 North Irby St., MSC-XX
Florence, SC 29501

RE: Perry Young, #252478 v. State of South Carolina
2010-CP-33-0134

Dear Judge Nettles:

Enclosed please find the proposed **Final Order** in the above matter. If this order meets with your approval, please sign it and forward it to the Marion County Clerk of Court for filing.

Yours very truly,


David Spencer
Senior Assistant Attorney General

DS/nb
Enclosure

cc: Perry Young, #252478 (w/enclosure)

FILED
2011 OCT 28 PM 1:57
MARION COUNTY CLERK OF COURT
FLORENCE, SOUTH CAROLINA

BOOK _____ PAGE _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
 Perry Young, #252478)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE 12TH JUDICIAL CIRCUIT MARION COUNTY
 Case No.: 2010-CP-33-0134 SOUTH CAROLINA

FINAL ORDER

FILED
 BOOK 145
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This matter comes to this Court by way of a post-conviction relief (PCR) application filed March 1, 2010. The Respondent made its Return and Motion to Dismiss on May 4, 2010, moving to dismiss the PCR application as successive and beyond the statute of limitations. This Court, after reviewing the pleadings and attachments of both parties, issued a Conditional Order of Dismissal on July 5, 2011, provisionally dismissing the application, but allowing Applicant twenty days from service of the Conditional Order to provide this Court with sufficient reason why this case should not be dismissed with prejudice. A copy of the Conditional Order was served on Applicant in person on July 27, 2011 (see attached Affidavit of Personal Service). On August 11, 2011, Applicant responded with a document entitled "Notion and Motion for Filing of Amendment to PCR Application".


Applicant, in his response, fails to indicate any reason why his claims could not have been brought in his prior PCR application or could not have been brought in a timely manner. The allegations generally allege either claims of ineffective assistance or indictment issues that should have been brought, if at all, in the prior PCR application. Accordingly, after careful consideration of the original pleadings and Applicant's response, this Court finds for the reasons

stated in its Conditional order that it must dismiss this application with prejudice as successive and untimely filed.

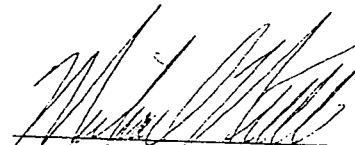
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days after receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED.

 _____, South Carolina

11-4- _____, 2011.



Michael G. Nettles
Chief Administrative Judge
12th Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
 Perry Young, #252478)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE 12TH JUDICIAL CIRCUIT
 Case No.: 2010-CP-33-0134

CONDITIONAL ORDER OF DISMISSAL

FILED
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This matter comes to this Court by way of a post-conviction relief (PCR) application filed March 1, 2010. The Respondent made its Return and Motion to Dismiss on May 4, 2010, moving to dismiss the PCR application as successive and beyond the statute of limitations. This Court announces its intention to grant the Respondent's motion.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. The Applicant was indicted at the August 1998 term of the grand jury for Marion County for kidnapping, carjacking, criminal sexual conduct - 1st degree, and possession of knife during commission of a crime of violence (98-GS-33-269). Applicant proceeded to trial and was found guilty as charged. On September 2, 1998, the Honorable James E. Brogdon, Jr., sentenced Applicant to confinement for a period of life without parole. Michael Ballenger, Esquire, represented the Applicant.

The Applicant filed a timely notice of appeal. After a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Young, 2000-UP-283 (filed April 17, 2000).

A CERTIFIED COPY OF THE ORIGINAL FILED IN THIS CASE
 BOOK _____ PAGE _____
Sherry R. Risher
 CLERK OF COURT, MARION COUNTY

Case No.: 2000-CP-33-337

Applicant subsequently filed an application for post-conviction relief (PCR) on August 24, 2000. An evidentiary hearing was convened on March 14, 2003, at the Florence County Courthouse. Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Ineffective assistance of appellate counsel; and
3. Prosecutorial misconduct.

The Honorable J. Michael Baxley denied and dismissed Applicant's application by written Order on December 14, 2001. The Applicant subsequently appealed. The Supreme Court of South Carolina dismissed the appeal. The remittitur was issued on April 22, 2003.

Current PCR Application

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "The defendant was denied discovery of all his Brady Materials."
2. "Applicant was denied effective assistance of counsel due to counsel's failure to move to quash indictment containing a sole police officer as a witness before the grand jury."

Before this Court are the records of the Marion County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's prior PCR and Appellate Court records, Applicant's current PCR application and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code §17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court finds, further, that this Application for Post-Conviction Relief must 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 (2003). S.C. Code Ann. §17-27-45(a) reads 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 upon an appeal, whichever is later.

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). The Applicant was convicted of the offense(s) he challenges in this Application on September 2, 1998. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on April 17, 2000. This Application was filed on March 1, 2010, which was well after the statutory filing period had expired.


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). In addition, S.C. Code Ann. §17-27-70(c) (2003) 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." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.


CONCLUSION

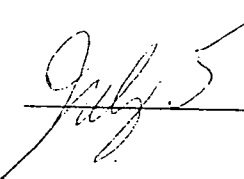
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss the Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Marion County Clerk of Court and shall also serve opposing counsel at the following address:

David Spencer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED!


Michael G. Nettles
Chief Administrative Judge
12th Judicial Circuit


_____, South Carolina


_____, 2011.

Perry Young # 252478
MCCI F4B223
386 Redemption Way
McCormick S.C. 29899

RECEIVED

AUG - 2 2013

MCCI
MAIL ROOM

The Supreme Court Clerk
Mr. Daniel E. Shearouse
P.O. Box 11330
Columbia S.C. 29211

The Department of Corrections has
not concurred in this matter before the
department. The sender assumes the
responsibility for the contents.