

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 Willie Gordon, #103101,)
 Applicant,)
 v.)
))
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL
 CIRCUIT
 Case No.: 2023-CP-46-00232

ORDER OF DISMISSAL

FILED-RECEIVED
 2023 MAR 11 PM 3:50
 ANDRE H. SIVANT
 C.C.P. & GS
 YORK COUNTY, SC

Applicant Willie Gordon, through retained counsel Leland Greeley, Esquire, filed two applications for post-conviction relief on January 25, 2023. The application in Case No. 2023-CP-46-00232, challenges Applicant’s 2001 conviction and sentence for one count of trafficking crack cocaine (Indictment No. 2000-GS-46-03180), while the application in Case No. 2023-CP-46-00233 challenges his 1997 conviction and sentence for trafficking crack cocaine (Indictment No. 1997-GS-46-01286). Respondent the State of South Carolina moved to summarily dismiss Case No. 2023-CP-46-00232 as improperly successive, untimely, and barred by failure to meet the burden of proof required for newly discovered evidence under the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.*

An evidentiary hearing was convened on December 4, 2023, at the Moss Justice Center in York County, South Carolina. Leland B. Greeley, Esquire, represented Applicant, and Assistant Attorney General Zachary W Jones represented Respondent. Applicant waived his presence at the hearing.

At the conclusion of the evidentiary hearing, the Court took the matter under advisement. After reviewing the arguments, records, and evidence submitted by the parties, the Court finds that Applicant’s application must be dismissed as improperly successive and barred by the statute of limitations. The Court finds as follows:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was initially indicted in April 1997 for trafficking crack cocaine. After his indictment, Applicant and his co-defendant, Spencer Gordon, were jointly tried before the Honorable Don S. Rushing and a jury on May 5-6, 1997. Applicant was represented by Leland Greeley, Esquire. During the trial, Judge Rushing declared a mistrial when a State's witness mistakenly testified about an unrelated and uncharged drug transaction.

Following the mistrial, the grand jury issued an amended indictment again charging Applicant with seven (7) counts of trafficking in crack cocaine (1997-GS-46-01286). Thereafter, on June 9-12, 1997, Applicant was tried alone before the Honorable H. Dean Hall and a jury on count five of the indictment. Applicant continued to be represented by Leland Greeley, Esquire. On June 10, 1997, Applicant was found guilty of trafficking crack cocaine 10-28 grams and on June 12, 1997, received a thirty-year sentence and a \$50,000 fine. Applicant appealed, represented by Melody J. Brown of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gordon, Op. No. 99-UP-051 (S.C. Ct. App. filed February 2, 1999).

In October 2000, Applicant was indicted for trafficking crack cocaine on September 27th 1996 (2000-GS-46-3180), and the State sought a sentence of life without parole ("LWOP"). According to the Supreme Court of South Carolina, the indictment was "substantially the same as count seven of the 1997 indictment" which was *nol prossed* with the right to restore. Gordon, 356 S.C. at 148 n.2, 588 S.E.2d at 107 n.2. From February 26 through March 2, 2001, Applicant stood trial on the aforementioned charge before the Honorable Paul E. Short in York County where he

was represented by Michael Hitchcock, Esquire and Lisa Collins, Esquire (collectively, "Trial Counsel"). At the conclusion of trial, Applicant was found guilty and received a thirty-year sentence to be served concurrent with his 1997 conviction.

After the conclusion of the 2001 trial, both parties appealed. Applicant was represented by Elanor Duffy Cleary of the South Carolina Office of Appellate Defense. Following briefing, the case was certified to the Supreme Court of South Carolina pursuant to Rule 204(b), SCACR. On October 20, 2003, the Supreme Court of South Carolina affirmed Applicant's conviction and his sentence in a published opinion. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003); (App. 442-50). Rehearing was denied on November 20, 2003, and the remittitur was issued the same day.

1999-CP-46-505

Applicant filed an application for post-conviction relief ("PCR") on March 22, 1999, challenging his 1997 conviction and sentence. The State made its return on November 8, 1999. An evidentiary hearing was convened on October 30, 2001, at the Moss Justice Center in York County. Following the hearing, Judge John C. Hayes, III, denied and dismissed the application with prejudice on November 28, 2001.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court issued an order on February 21, 2003, affirming Judge Hayes' order. The Remittitur was issued on March 11, 2003.¹

¹ On September 13, 2017, Applicant attempted to file a "Motion to Reopen Judgment Pursuant to Rule 60(b)(4)," seeking relief from Judge Hayes' order denying and dismissing Applicant's 1999 PCR application. Judge Hayes, pursuant to the November 4, 2015, Order Restricting Future Filings (discussed below), found the motion frivolous and directed the York County Clerk of Court not to file Applicant's motion and to return the motion and filing fee to Applicant. Applicant

2003-CP-46-3304

Applicant subsequently challenged both his 1997 conviction and his 2001 conviction in an application for post-conviction relief filed on December 12, 2003, and amended on May 9, 2006, and March 12, 2007. The State made its Return on January 5, 2005, and amended on March 28, 2007. An evidentiary hearing was convened on October 22-23, 2007. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire and Tricia A. Blanchette, Esquire. The Honorable Larry R. Patterson denied and dismissed with prejudice Applicant's application by written Order dated April 16, 2008.

A notice of appeal was filed on Applicant's behalf and an appeal perfected on June 8, 2009. The State filed its Return to the Petition for Writ of Certiorari on December 29, 2009. The South Carolina Supreme Court denied the Petition for Writ of Certiorari on December 2, 2010. The Remittitur was issued on December 21, 2010.

2:04-0203-RBH

On January 22, 2004, Applicant filed his first Petition for a Writ of Habeas Corpus in the Federal District Court for the District of South Carolina. The State filed its Return and Motion for Summary Judgment on May 24, 2004. On June 29, 2004, the Honorable Robert S. Carr issued a Report and Recommendation, recommending the petition be dismissed with prejudice. On April 1, 2005, the Honorable R. Bryan Harwell adopted the Report and Recommendation and dismissed Applicant's petition.

8-11-3399-RBH-JDA

Applicant filed a second Petition for Writ of Habeas Corpus in the Federal District Court

appealed Judge Hayes' decision, and the South Carolina Supreme Court dismissed his appeal for failure to comply with the requirements of Rule 243(d), SCACR.

for the District of South Carolina on December 14, 2011. The State filed its Return and Memorandum of Law in Support of Motion for Summary Judgment on May 11, 2012. On September 19, 2012, the Honorable Jacquelyn A. Austin issued a Report and Recommendation, recommending the State's Motion for Summary Judgment be granted. On January 17, 2013, the Honorable David C. Norton issued an order, adopting the Report and Recommendation and dismissing the petition with prejudice. Judge Norton's order also denied a certificate of appealability.

2014-CP-46-619 and -620

Applicant filed two additional PCR applications on March 5, 2014: Case No. 2014-CP-46-619, challenging his 1997 conviction and sentence, and Case No. 2014-CP-46-620, challenging his 2001 conviction and sentence. The State responded and moved to dismiss both applications on September 24, 2014. Case Nos. 2014-CP-46-619 and -620 were summarily dismissed by Judge Lee S. Alford and Judge Hayes, respectively. Applicant filed a notice of appeal concerning Judge Hayes' dismissal of Case No. 2014-CP-46-620, which the South Carolina Supreme Court dismissed on July 13, 2015, for failure to provide a sufficient explanation pursuant to Rule 243(c), SCACR.

November 4, 2015, Order Restricting Future Filings

On November 4, 2015, Judge Hayes issued an order noting Applicant's history of "repetitive and frivolous" applications and directing the York County Clerk of Court not to accept any further filings from Applicant unless accompanied by a filing fee and an affidavit that the matters raised therein are not frivolous. The order also directs that any future application be submitted to the Chief Administrative Judge for Common Pleas prior to being filed. Only upon a finding by the Chief Administrative Judge that the issues raised in the application are non-frivolous

would the application then be sent to the Clerk's office for filing.

II. Current Action Before Court

In his current application—the third application challenging his 2001 conviction and sentence—Applicant alleges that he is being held in custody unlawfully for the following reason:

Recently [A]pplicant learned that in June 2000, prior to his trial in March 2001, the State of South Carolina, by way of Deputy Solicitor Kevin Brackett, dismissed the pending the [sic] drug charges against the primary witness for the State, Tommy James Rinehart, and the State never revealed to the defendant or his attorneys Michael Hitchcock and Lisa Collins, that the charges had been dismissed. Such lack of notice was in violation of *United States v. Brady*, and it is submitted that such lack of notice was not harmless.

The Honorable Daniel D. Hall, Chief Administrative Judge for Common Pleas for the Sixteenth Judicial Circuit, issued an order permitting Applicant to file this application.

III. Findings of Fact and Conclusions of Law

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the York County Clerk of Court regarding the subject conviction, the records of Applicant's direct appeal, the records of Applicant's prior post-conviction relief proceedings and subsequent appeals, and the current application for post-conviction relief. This Court has reviewed the records and evidence submitted by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Summary Dismissal based on Statute of Limitations

The Court finds that 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. sections 17-27-10 to -160. Section 17-27-45 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 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). In the present case, Applicant was convicted and sentenced on March 2, 2001. Remittitur from the direct appeal was issued on November 20, 2003. Based on Section 17-27-45(a), Applicant needed to file an application for post-conviction relief within one year of his remittitur. The Applicant was therefore required to file his application on or before November 21, 2004. This Application was filed on January 25, 2023, more than *eighteen years* after the expiration of the statutory filing period.

Applicant argues, however, that his current application is timely because it is based on newly discovered evidence: namely, the dismissal of drug charges against one of the State's witnesses, Tommy James Rhinehart, prior to Applicant's trial. The Uniform Post-Conviction Procedure Act allows an application to be filed beyond the one-year statute of limitations prescribed by section 17-27-45(A) when the application is based on newly discovered evidence. Where an applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed 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. S.C. Code Ann. §17-27-45(C).

In paragraph 16 of his PCR application, Applicant claims he did not discover the dismissal of Rhinehart's charges until April 2022. Therefore, he argues his application—filed on January

25, 2023—was timely under section 17-27-45(C).

However, Applicant raised essentially the same claim in his 2003 post-conviction relief action. On May 9, 2006, in Case No. 2003-CP-46-3304, Applicant filed a “Supplemental Application for Post Conviction Relief,”² raising, *inter alia*, the following allegation:

ISSUE 2

Brady Violation/Prosecutorial Misconduct

State failed to disclose favorable evidence in violation of Brady v. Maryland, [i.e.] impeachment material of State’s key witness, Tommy James Rhinehart, and Applicant asserts prosecutorial misconduct.

On pages 6–8 of that document, Applicant alleges that the State *nol prossed* an indictment for trafficking crack cocaine against Tommy James Rhinehart in exchange for his testimony. He also asserts that the solicitor somehow caused the grand jury to enter “No Bill” on another indictment against Tommy James Rhinehart for pointing a firearm and assault and battery of a high and aggravated nature. Notably, the document appears to confirm that the dismissal of Rhinehart’s trafficking charge was already known to Applicant’s attorneys at the time of his trial and that “[t]he jury was on notice” that Rhinehart had a “motive to misrepresent the facts” as a result.

By order dated April 16, 2008, Judge Larry R. Patterson denied and dismissed Applicant’s post-conviction relief action with prejudice. That order, on pages 11–12, reflects that Applicant’s trial attorneys, Lisa Collins and Michael Hitchcock, testified at the evidentiary hearing that the State had disclosed Rhinehart’s criminal record to them, including the *nol prossed* and no-billed

² In Case No. 2003-CP-46-3304, Applicant challenged both his 1997 and 2001 convictions in the same post-conviction relief proceeding; however, he filed a separate document, also entitled “Supplemental Application for Post Conviction Relief,” to address allegations relating to his 1997 conviction. The language quoted in this section was taken from the “Supplemental Application for Post Conviction Relief” relating to his 2001 conviction.

charges. They further testified that Rhinehart was cross-examined on the dismissal of his charges and that they attempted to impeach his credibility on that ground. By the time it began its deliberations, the jury was well aware that Rhinehart was testifying against Applicant in an attempt to get out of his drug charges.

The Court finds that the evidence of the dismissal of Rhinehart's charges is not "newly discovered evidence" as would warrant the application of section 17-27-45(C). The records of Applicant's trial and his earlier post-conviction relief action clearly demonstrate that any evidence relating to Rhinehart's charges being *nol prossed* was known to Applicant's counsel prior to trial. Even if Applicant's trial counsel *had* been ignorant of this evidence, it could trivially have been discovered by the exercise of due diligence, either at trial or when Applicant previously raised this issue on post-conviction relief. There is no dispute that the dismissal of Rhinehart's charges was publicly available information. Therefore, the Court finds Applicant has not presented any valid reason to excuse his failure to file the present application within the one-year period prescribed by section 17-27-45(A). Accordingly, this application is barred by the statute of limitations, and must be dismissed with prejudice.

Summary Dismissal based on Successiveness

The Court also finds the current application must be dismissed because it is successive to Applicant's previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. section 17-27-90 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 point to 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., 305 S.C. 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. The applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735.

This is now the third post-conviction relief application Applicant has filed challenging his 2001 conviction and sentence. The burden is on Applicant to show that the allegations raised in this application could not have been raised in his earlier post-conviction relief actions. The Court finds Applicant has not met this burden.

As already discussed, Applicant has previously raised a Brady v. Maryland claim related to the dismissal of charges against Tommy James Rhinehart in his 2003 post-conviction relief action. The claim presented in his current application is essentially duplicative of the issue already raised to and ruled on by Judge Patterson in the prior action. Therefore, the Court finds Applicant has not presented any ground that would justify his filing a successive post-conviction relief application. Accordingly, this application is barred by section 17-27-90 of the Uniform Post-Conviction Procedure Act and must be dismissed with prejudice.

[conclusion and signature on following page]

IV. Conclusion

Based on all the foregoing, this Court finds and concludes that the current application for post-conviction relief is procedurally barred as both untimely and improperly successive. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6th day of March, 2024.

S. P. Outenberg, South Carolina


GRACE GILCHRIST KNIE
Presiding Judge
Sixteenth Judicial Circuit