

RECEIVED

Aug 22 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2020-CP-21-2592

Eddie Blash,Petitioner,

v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Petitioner, Eddie Blash, appeals the order of the Honorable Clifton Newman, dated July 29, 2024, and filed August 9, 2024. Petitioner received written notice of entry of this order on August 17, 2024.

8/22, 2024



Michael H. Lifsey
Post Office Box 548
Chester, South Carolina, 29706
(803) 899-5040
ATTORNEY FOR PETITIONER

Opposing Counsel:
Danielle Dixon
Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

ineffective for failing to timely file a notice of appeal. Thereafter he amended it to also allege counsel was ineffective for failing to object to the testimony of a witness. On December 12, 2007, an evidentiary hearing convened before the Honorable Thomas Russo. Judge Russo granted Applicant a belated direct appeal and denied the remaining allegations with prejudice.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Kathrine Hudgins. On March 28, 2012, the Supreme Court reversed Applicant's sentence and remanded for resentencing.

On May 8, 2012, Applicant appeared before the Honorable Thomas Russo for resentencing. Hank Anderson, Esquire, represented Applicant, and Assistant Solicitor Patricia S. Parr represented the State. Judge Russo sentenced Applicant to twenty-eight years imprisonment. Applicant filed an untimely appeal, which was dismissed. The remittitur was sent March 21, 2013.

ii. Second PCR (2014-CP-21-0850)

On April 3, 2014, Applicant filed a second PCR application. The State filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. On March 14, 2017, an evidentiary hearing convened before the Honorable Paul M. Burch. Jonathan D. Waller, Esquire, represented Applicant, and Assistant Deputy Attorney General Lindsey A. McCallister represented Respondent. On August 17, 2017, Judge Burch issued an order granting Respondent a belated appeal of his resentencing hearing and dismissing his remaining claims with prejudice.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Lanelle C. Durant through the filing of an Anders brief raising the following issue:

The resentencing court erred in allowing Blash's criminal history from Florida into evidence which was prejudicial to Blash because the history contained one conviction which was tried in Blash's absence for the same offense for which he was being resentenced and also contained numerous drug offenses which did not indicate convictions.

On October 7, 2020, the Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent October 29, 2020.

Current Application

On November 12, 2020, Applicant *untimely* commenced this third PCR application alleging he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsel was ineffective for failing to object to the State's admitting into evidence to the court Petitioner's prior Florida convictions where there was no evidence of those convictions at resentencing.
 - b. Counsel failure to object at resentencing court, Petitioner issues were not preserved for appellate review.

As relief, Applicant seeks to be resentenced. Before this Court are the Florence County Clerk of Court records of the underlying conviction, Applicant's records from the Department of Corrections, the records of Applicant's prior PCR actions, Applicant's appellate records, and the records of this PCR action.

Motion to Dismiss

The State moved for dismissal arguing no genuine issue of fact necessitated an evidentiary hearing. After reviewing the records in this case and hearing argument, this Court GRANTS Respondent's motion and dismisses this application with prejudice. Set forth below are this Court's findings of fact and conclusions of law:

- i. **Statute of Limitations**

This Court finds this application is barred by the statute of limitations. Section 17-27-45(A) of the South Carolina Code requires a PCR application to be filed "within one year after the entry of a judgment . . . or within one year after the sending of the remittitur"

Here, Applicant was resentenced on May 8, 2012. Applicant filed an untimely notice of appeal from his resentencing hearing that was dismissed, and the remittitur was sent March 20, 2013. Any PCR application related to the resentencing hearing was thus due by March 20, 2014. This application was filed November 12, 2020—more than seven years after the filing period expired. Applicant has not set forth a valid reason why the statute of limitations should be tolled. Accordingly, this application shall be dismissed as untimely.

ii. Successive

Applicant's allegations shall be dismissed as successive to his 2014 PCR application. Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in a prior PCR action. 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 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.

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). 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. 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).

In his application, Applicant alleges counsel was ineffective at the resentencing hearing for not objecting to the use of Florida convictions. Applicant has failed to establish any sufficient reason why he could not have raised this allegation in his 2014 PCR action. Therefore, he has failed to meet his burden, and this application shall be summarily dismissed as successive.

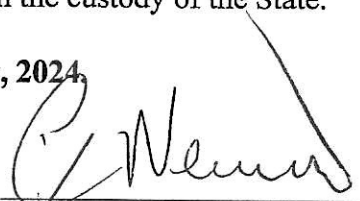
Conclusion

Based on the foregoing, this Court GRANTS Respondent's motion to dismiss, and dismisses this application with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 29th day of July, 2024.


CLIFTON NEWMAN
Presiding Judge
Twelfth Judicial Circuit

Columbia, South Carolina

2024 AUG -9 AM 11:59