

STATE OF SOUTH CAROLINA)
 COUNTY OF MARLBORO)
)
 Darrell Williams, SCDC No. 219730)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTH JUDICIAL CIRCUIT
 Case No. 2020-CP-34-00142
)
CONDITIONAL ORDER
OF DISMISSAL

This matter comes before the Court pursuant to Applicant Darrell Williams's June 5, 2020 application for post-conviction relief. Respondent made its return and motion to dismiss pursuant to S.C. Code Ann. §17-27-70(b). The Court has reviewed the record and finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. Applicant was indicted for six counts of first-degree burglary, four counts of second-degree burglary, two counts of grand larceny, four counts of petit larceny, and possession of tools to be employed in crime (1995-GS-34-0454, -0455, -0456, -0457, -0458, -0459, -0460, -0461, -0462, -0463, -0464, -0465, -0466, -0467, -0468, -0469). Applicant was represented by Frank E. Cain, Jr., Esq. On May 3, 1995, Applicant appeared before the Honorable James E. Lockemy and entered a guilty plea to the charge of first degree burglary and sentenced him to fifteen years' incarceration.

¹ Applicant was sentenced to fifteen years' imprisonment in 1995, but remains incarcerated in the South Carolina Department of Corrections due to the 2008 imposition of a life sentence. See *State of South Carolina v. Darrell Williams*, 08-GS-40-13175. That sentence stemmed from convictions in the Richland County Court of General Sessions for petit larceny and first degree burglary. (2008-GS-40-6965; 2008-GS-40-13175). Applicant's subject 1995 conviction was used to enhance his sentence to a term of imprisonment for life without the possibility of parole. S.C. Code Ann. §17-25-45 (A)(1)(a) ("[U]pon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . one or more convictions for a most serious offense. . . ." Applicant has filed

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Applicant filed a notice of appeal. Respondent filed a motion to dismiss on July 17, 1995, arguing that Applicant failed to properly serve the notice of appeal. On August 10, 1995, the Supreme Court issued an order dismissing the appeal.

First PCR Application: 1995-CP-34-0223

Applicant filed his first application for post-conviction relief on December 20, 1995 and alleged he was being held in custody unlawfully for the following reasons.

1. Ineffective assistance of counsel
2. Involuntary guilty plea
3. Denial of due process

Respondent made its return and requested an evidentiary hearing. An evidentiary hearing was convened on March 6, 1998. Applicant was represented by B. Allen Bullard, Jr., Esq., at the hearing before the Honorable Marc H. Westbrook. Applicant's claims were dismissed and his request for post-conviction relief was denied.

Applicant filed a notice of appeal and the appeal was perfected by Aileen P. Clare, Esq., of the South Carolina Office of Appellate Defense. Applicant's counsel filed a *Johnson* petition and the South Carolina Supreme Court denied the petition on August 23, 1999.² Applicant filed a *pro se* "Extraordinary Petition for Writ of Certiorari" in the United States Supreme Court on July 23, 1998 (98-5348). The United States Supreme Court denied the petition on October 5, 1998.

Second PCR Application: 1996-CP-34-0152

Applicant filed a second application for post-conviction relief on September 3, 1996, during the pendency of his first PCR action. This application was merged with his first application by order dated October 21, 1996.

additional post-conviction relief applications challenging those 2008 convictions but does not raise them in the subject application.

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

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Third PCR Application: 2010-CP-34-0008

Applicant filed a third application for post-conviction relief on January 11, 2010. Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Past convictions used to enhance conviction under Sec. 17-25-45(A)
2. PCR counsel operated under a conflict of interest.

Respondent made its return and moved to dismiss, citing the statute of limitations and the successiveness of the application. The Honorable Paul M. Burch granted Respondent's motion, dismissed Applicant's claims, and denied him post-conviction relief via written order on July 1, 2010.

II. ALLEGATIONS RAISED IN THE CURRENT APPLICATION

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

1. Denied counsel on prior conviction
 - a. waiver of *Faretta* right not knowing, voluntary given
2. Failed to inform about collateral consequences *Padilla v. Kentucky*
 - a. counsel failed to inform applicant of future collateral consequences.

Before the Court are the Marlboro County Clerk of Courts records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the records from the past PCR applications, and the present application for post-conviction relief.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings, the record, and all relevant supporting documents. Pursuant to S.C. Code Ann. §17-27-70(b), the Court makes the following findings of fact and conclusions of law:

Statute of Limitations

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The Court finds Applicant's application is untimely and shall be dismissed for failure to comply with the Uniform Post-Conviction Relief Act's filing procedures. S.C. Code Ann. §17-27-10 to -160. Specifically, 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 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 on appeal, whichever is later.

S.C. Code Ann. §17-27-45(A). 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). Additionally, S.C. Code Ann. §17-27-70(c) 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."

The South Carolina Supreme Court has held 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). Applicant was convicted on May 3, 1995. His appeal was denied on August 10, 1995. Applicant's present application for post-conviction relief was filed on June 5, 2020, nearly twenty-four years after the statutory filing period had expired. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successiveness

The Court also finds that the application is successive to previous applications and shall be dismissed due to the Uniform Post-Conviction Procedure Act's prohibition on 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 earlier raised in a

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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 PCR applications are forbidden 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. If the applicant could have raised these 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's current allegations were or could have been raised in Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. §17-27-90. Applicant has failed to establish any 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, and the application shall be dismissed as successive to Applicant's previous PCR applications.

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IV. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), this 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 (20) 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 4th Circuit
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Marlboro County Clerk of Court and opposing counsel within twenty (20) days, and that this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 28th day of January, 2020.



Paul M. Burch
Chief Administrative Judge
Fourth Judicial Circuit

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