

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Curtis Lamar King,)
S.C.D.C. No. 273504,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-23-0785

CONDITIONAL ORDER OF DISMISSAL

2013 FEB 11 PM 3:16

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 11, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. September 2000 term of the Greenville County Grand Jury for armed robbery (2000-GS-23-6736) and at the February 2001 term for attempted armed robbery (2001-GS-23-1171). He was represented by John I. Mauldin, Esquire and Susannah C. Ross, Esquire.

After the State called the case to trial, the Applicant was found guilty as indicted. On March 14, 2001, the Honorable H. Dean Hall sentenced the Applicant to concurrent terms of twenty-five (25) years for armed robbery and twenty (20) years for attempted armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

Anders¹ brief. The Court of Appeals dismissed the appeal. State v. King, Op. No. 2003-UP-65 (S.C. Ct. App. filed January 22, 2003).

2003-CP-23-1094

The Applicant filed a PCR application on February 13, 2003 (2003-CP-23-1094). The Applicant raised the following issues in his PCR application:

1. Ineffective assistance of trial counsel.
2. Denial of due process.

An evidentiary hearing was convened on December 3, 2003 at the Greenville County Courthouse. Michael Barcroft, Esquire represented the Applicant. The Honorable J. Michael Baxley denied and dismissed the PCR application by order dated January 29, 2004.

A notice of appeal was filed on the Applicant's behalf. The appeal was perfected in the nature of a Johnson² petition by Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense. The petition was denied by the South Carolina Supreme Court by order dated January 19, 2006.

2007-CP-23-0054

The Applicant filed a petition for writ of habeas corpus in the Greenville County circuit court (2007-CP-23-0054). The Honorable D. Garrison Hill, acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal dated and filed on February 22, 2007. This order provided the Applicant twenty (20) days from receipt of such order to show cause why the order should not become final. Though the Applicant did submit a response, Judge Hill issued a final order of dismissal dated May 7, 2007 and filed May 10, 2007. The

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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

Applicant did not appeal.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on February 8, 2007 (9:07-00104-TLW-GCK). The Respondent submitted a motion for summary judgment on May 20, 2007. The Honorable George C. Kosko, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 27, 2007. On October 26, 2007, the Honorable Terry L. Wooten, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

2009-CP-23-9471

The Applicant filed a PCR application on November 9, 2009 (2009-CP-23-9471). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to object to prejudicial in-court identification of the Applicant.
 - b. Failed to conscientiously discharge his professional responsibilities.
 - c. Failed to investigate and prepare regarding the Applicant's medical records.
 - d. Failed to object to prejudicial evidence and chain of custody at trial.
 - e. Failed to challenge the "delayed indictment."
 - f. Failed to "subject the prosecutions case to any adversarial testing."
 - g. Failed to argue the confrontation clause or misidentification.
 - h. Failed to object to the identification as unduly suggestive.
 - i. Failed to obtain information of another suspect wearing the victim's property.

The Honorable D. Garrison Hill issued a conditional order of dismissal dated February 10, 2010 and filed February 16, 2010. Though the Applicant submitted a response to this order,

the Honorable Edward W. Miller issued a final order of dismissal dated May 17, 2010 and filed May 19, 2010. By order filed August 4, 2010, Judge Miller denied the Applicant's "S.C.R.Civ.P. 59(e) Notice of Intent to Appeal Entry to Petition."

The Applicant filed a timely notice of appeal. The South Carolina Supreme Court required the Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the denial of his application was improper. In an order of dismissal dated October 12, 2010, the Supreme Court found the Applicant failed to meet his burden in this regard. The remittitur was issued on October 28, 2010.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Grant-vacate-reverse order for miscarriage of due process as a result of counsel's appointed to prejudice."
2. "Plain erroneous judgement."
3. "My trial atty. failed to subject the prosecution to any adverse testing, to preserve prejudicial evidence at trial."
4. "Prejudicial atmosphere of my trial atty. neglected the necessary investigation of preparation of my case to conscientiously [sic] gather information to protect my rights of discretionary holding favorable to applicant."
5. "My trial appointed atty. failed to object to prejudicial of unduly suggestive out or in-court identification."
6. "My trial atty failed to ascertain reasonable information regarding unnamed individual who demonstrated an assailant of the crime."
7. "The Attorney that represented me on these indictments in court failed to function as the performance Constitution sixth amend guarantees."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C.

Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on March 14, 2001 and the South Carolina Court of Appeals dismissed the appeal on January 22, 2003. The Applicant was therefore required to file his application before January 22, 2004. This application was filed on February 11, 2013, which was more than nine years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney

General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 1 day of July, 2013.

Man / -

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2300785

Curtis Lamar King vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
SCRPC (Vol. Nonsuit): Rule 12(b), SCRPC: Rule 41(a).
 Rule 43(k), SCRPC (Settled): Other: _____
- ACTION STRICKEN (CHECK REASON):
 Rule 40(j) SCRPC: Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed: Reversed: Remanded:
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 8th day of July, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 8th day of July, 2013, and a copy mailed first class this 8th day of July, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Curtis Lamar King 273504 Turbeville Correctional
Institution P O Box 252 Turbeville, SC 29162

Karen Ratigan - Attorney General Office

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court
- Clerk of Court