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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ANDERSON SC

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

2017 SEP 13 AM 11:35

Angela M. Vaughn., # 313443,

COMMON PLEAS AND
GENERAL SESSIONS

2016-CP-04-00534

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of the application for post-conviction relief (PCR) filed by Angela M. Vaughn (Applicant) on March 2, 2016. Respondent made its Return requesting that the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the March 2004 term of the Anderson County Grand Jury for murder (2004-GS-04-0748) and possession of a firearm during a violent crime (2004-GS-04-0749). On January 17, 2006, Applicant was found guilty as indicted. Applicant was represented by Robert Gamble, Esquire. Catherine Townsend Huey, Esquire, prosecuted the case. The Honorable Alexander S. Macaulay sentenced Applicant to five (5) years' imprisonment for possession of a firearm during a violent crime and thirty (30) years' imprisonment for murder. The sentences were to run concurrently. Applicant appealed her conviction and sentenced.

A timely Notice and Anders brief were filed on Applicant's behalf by Michael Barcroft, Esquire, and on March 12, 2008, the South Carolina Court of Appeals dismissed the appeal and

granted counsel's request to be relieved. Op. No. 2008-UP-167 Applicant failed to timely file a Petition for Rehearing. The Remittitur was sent on March 31, 2008.

2008-CP-04-2319

Applicant filed her first application for post-conviction relief on July 18, 2008 alleging she was being held in custody unlawfully as a result of ineffective assistance of counsel, prosecutorial misconduct, and denial of due process rights. An evidentiary hearing into the matter was convened on June 15, 2010, before the Honorable R. Lawton McIntosh. Applicant was present and represented by Mary McCormac, Esquire. Gregory P. Jones, Jr., Esquire, of the South Carolina Attorney General's Office, represented Respondent. On December 14, 2011 by written order, Judge McIntosh denied and dismissed Applicant's application with prejudice.

PCR counsel timely appealed. A Petition for Writ of Certiorari was filed in the South Carolina Court of Appeals on Applicant's behalf by Susan Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. Respondent made its Return and Motion for Summary Judgment. On April 30, 2014, the Court of Appeals denied Certiorari. The Remittitur was issued on May 23, 2014.

2012-CP-04-0375

Applicant filed a second application for post-conviction relief on February 6, 2012, alleging ineffective assistance of counsel and prosecutorial misconduct. Respondent made its Return on or about July 26, 2013. On September 10, 2013, the Honorable R. Lawton McIntosh issued the Conditional Order of Dismissal.

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Applicant subsequently filed a Petition for Writ of Habeas Corpus on December 22, 2014 alleging the following grounds for relief:

Ground One: Ineffective assi[s]tance of trial counsel

Supporting Facts: As the testimony at the post-conviction relief hearing demonstrates, the defendant has a long history of abuse, both as a child and as an adult. Trial counsel only had the defendant examined by a professional retained by the State of South Carolina. He never had the defendant examined by an independent professional to determine if the defendant qualifies as a battered spouse or partner.

Ground Two: Trial counsel failed to present evidence as to the parole eligibility of the Petitioner under S.C. Code § 16-25-90.

Supporting Facts: As developed at the Post conviction relief hearing, the Petitioner has a long history of abuse both as a child and as an adult. Trial counsel never advised Petitioner she could be eligible for parole under S.C. Code § 16-25-90. Petitioner is informed and beli[e]ves that her personal history would have made her parole eligible if trial counsel had presented the proper argument.

Ground Three: Failure of post-conviction relief counsel to effect[t]ively represent Petitioner at the post-conviction relief Hearing

Supporting Facts: At the post-conviction relief hearing all counsel for Petitioner did was have the Petitioner, trial counsel of the Petitioner and the daughter of the Petitioner testify. Post-conviction relief counsel never tried to obtain the services of an expert who could have developed her defense of being a battered woman. Post-conviction relief counsel also failed to deve[l]op through the testimony of other lay witnesses that Petit[i]oner had in fact been a battered woman. PCR counsel also failed to obtain the services of an expert who could have established that the petitioner was suffering from battered woman's syndrome[sic].

Ground Four: Failure of appellate counsel to adequately brief the issue of the he[a]rsay statements of the deceased.

Supporting Facts: During the trial testimony was given that the deceased said he as planning on leaving the petitioner. Trial counsel made a proper objection to the testimony. Appellate counsel submitted an Ander's brief and only have the issue a very cursory treatment.

On May 20, 2015, the Honorable Kaymani D. West, United States Magistrate Judge, issued the Report and Recommendation, recommending the Respondent's Motion for Summary Judgment be granted and Applicant's petition be denied. On June 25, 2015, the Honorable David C. Norton, United States District Judge, issued the written order affirming the Report and Recommendation of the Magistrate Judge.

CURRENT APPLICATION

In her *third* and current application, Applicant is alleging she is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of trial and PCR counsel. “PCR attorney never attempted to present competent evidence that I was a victim of physical abuse and a defense should have been presented to the jury in my trial.”
 - a. “Trial Counsel appeared not to understand that a battered spouse syndrome defense was in fact compatible with a self defense defense. He specifically declined to raise the battered spouse defense. He never requested that I be examined by a truly independent professional in support of the battered spouse defense.”
 - b. “Neither my trial counsel nor PCR counsel ever presented any testimony by which I could be parole eligible as a batter[ed] spouse pursuant to South Carolina Code section 16-25-90. As the statute gives me a right to such a hearing trial counsel and post-conviction relief counsel should have asked for such a hearing.”
 - c. “S.C. Code sec. 16-25-90 gives a person the right to present evidence at either the trial or in post-conviction relief hearing of the fact that their partner battered them. I have never had such a hearing. I am informed and believe that there is ‘credible evidence of a history of criminal domestic violence, as provided in section 16-25-20, suffered at the hands of the household member’ as required by the statute.”

Also, before the Court are the records of the Anderson County Clerk of Court, Applicant’s records from the South Carolina Department of Corrections, Applicant’s prior PCR records, records from Applicant’s Federal Habeas action, and the records from this action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to state a claim

Applicant alleges she received ineffective assistance of counsel on her prior post-conviction relief application. Such a claim is not a ground for relief and not a sufficient reason to warrant a successive application. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
 2. That the court was without jurisdiction to impose sentence;
 3. That the sentence exceeds the maximum authorized by law;
 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....
- S.C. Code Ann. § 17-27-20 (1976).

Whether or not Applicant's post-conviction relief counsel performed adequately is not within the scope of the PCR Act. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of her original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court has held the PCR rules "contemplate an adjudication on the merits of the original petition." Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 395. Aice further held that "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394.

Applicant's contention that prior PCR counsel was ineffective in failing to present competent evidence that Applicant was a victim of physical abuse, even if true, is not a sufficient reason warranting a successive PCR application. Accordingly, this action is dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), SCRCPP.

Statute of Limitations

The application is 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 ("the Act"). 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 offense 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).

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). Applicant was found guilty of the offenses she now challenges on January 17, 2006. Accordingly, Applicant was required to file this Application on or before January 17, 2007. Applicant did not file this Application until March 2, 2016, which was well beyond the statutory filing period.

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). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. §17-27-70(c) (1985) 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, the Court dismisses this application for failure to file within the time mandated by the Act.

Successive

Similarly, this application for post-conviction relief is summarily dismissed because it is successive to the previous application for post-conviction relief and fails to state a claim upon which relief can be granted. S.C. Code Ann. § 17-27-90 (1985) 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 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). “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). “Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than ‘one bite at the apple’ as it were.” Id. The “burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised in a previous application.” Id.

Applicant raised her claims of ineffective assistance of trial and PCR counsel in her previous actions. Moreover, Applicant’s allegation of ineffective assistance of prior post-conviction relief (PCR) is not a sufficient reason to warrant a successive PCR action. See

Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016). Accordingly, this Court summarily dismisses the application as successive to Applicant's previous PCR application.

Laches

Lastly, this application should also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant was convicted and sentenced in 2006, and now seeks post-conviction relief *eleven years* after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574

S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. See, e.g., Bray at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the Application is summarily dismissed as barred by the doctrine of laches.

{Signature on the following page.}


CONCLUSION

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

Office of the Attorney General
Attn: Lindsey McCallister, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 10th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 14 day of September, 2017.



J. CORDELL MADDOX JR.
Chief Administrative Judge
Tenth Judicial Circuit

Andrew _____, South Carolina

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