

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

James R. Rose, #293938

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-10-03190

**CONDITIONAL ORDER OF
DISMISSAL**

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FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by James R. Rose (Applicant) on June 30, 2023, and amended April 29, 2024. Respondent made its return and moved to dismiss the application as untimely and successive. After consideration, Respondent’s motion to dismiss is granted.¹

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections serving a life sentence. In June 2012, the Charleston County Grand Jury indicted Applicant for murder (2012-GS-10-3312); this charge arose from the fatal shooting of Leland Shannon on January 24, 2012.

Trial and Direct Appeal

On December 9, 2013, Applicant proceeded to a jury trial before the Honorable Stephanie P. McDonald. Martha Kent Runey, Esquire, and Megan Ehrlich, Esquire, represented Applicant, and Assistant Solicitors Jennifer Shealy and Jessica Baldwin prosecuted the case. The jury

¹ The return was due to be filed within 90 days of service. See Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”). Now, having completed the return and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court to accepts this returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the trial court, and the trial court may extend the time for filing).

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convicted Applicant as indicted. On December 12, 2013, Judge McDonald sentenced him to life.

Applicant filed a timely notice of appeal, and Appellate Defender Susan B. Hackett perfected the appeal. The Court of Appeals affirmed. State v. Rose, 2015-UP-287 (Ct. App. filed June 17, 2015). The remittitur was sent July 6, 2015.

First PCR action and subsequent appeal

On July 7, 2015, Applicant filed his first PCR application (2015-CP-10-3796), alleging various grounds of ineffective assistance of trial and appellate counsel, prosecutorial misconduct, and a due process violation of violation his right to a speedy trial. Thereafter, he filed an amended application arguing counsel was ineffective for (1) not objecting to or moving to quash the indictment, or including in the motion for directed verdict that there was a material variance between the indictment and the State's proof; (2) failing to call as witnesses Sofia Wiley and Everlina Brickman; (3) failing to call alibi witness Amber Wiley; (4) failing to effectively impeach Tawana Alston; and (5) failing to object to improper comments in the State's closing argument.

On January 10, 2017, an evidentiary hearing convened before the Honorable William H. Seals, Jr. James K. Falk, Esquire, represented Applicant, and Assistant Attorney General Alicia Olive represented the State. On September 15, 2017, Judge Seals issued an order denying relief and dismissing the application. Applicant appealed (2017-002052) but later moved to withdraw his appeal. On August 5, 2020, the Court of Appeals dismissed Applicant's appeal based on his motion to withdraw. The remittitur was sent August 26, 2020.

First federal habeas corpus petition

On August 12, 2020, Applicant filed his first petition for a writ of habeas corpus in the federal district court (0:20-cv-02921-RBH). The State filed a return and motion for summary judgment. On April 19, 2021, the district court issued an order granting the State's motion for

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summary judgment. The court did not issue a certificate of appealability. Applicant filed a notice of appeal in the Fourth Circuit, which was dismissed October 19, 2021 (USCA4 Appeal: 21-6938).

Petitions filed in South Carolina Supreme Court's original jurisdiction

In 2020, Applicant filed a petition for writ of habeas corpus in South Carolina Supreme Court's original jurisdiction (2020-000586). That petition was denied January 27, 2021.

In 2022 and 2023, Applicant filed additional petitions in the South Carolina Supreme Court requesting it exercise its original jurisdiction to grant him relief, including a petition for a writ of habeas corpus, motions for bail, motions to amend his complaint, and motions challenging the trial court's subject matter jurisdiction (2022-000116, 2023-000905). On August 25, 2023, the Court denied his petition for writ of habeas corpus, declined to entertain his remaining requests for relief in the Court's original jurisdiction, and denied his motions for bail as moot.

Additional petitions filed in federal court

On August 18, 2022, Applicant filed a second petition for a writ of habeas corpus in the federal district court (0:22-cv-02050-RBH). On October 28, 2022, that petition was dismissed as successive.

On March 13, 2023, Applicant filed a motion in the United States Court of Appeals for the Fourth Circuit for an order authorizing the district court to consider a successive petition for habeas corpus relief; that motion was denied on March 17, 2023 (USCA4 Appeal: 23-137).

On May 2, 2023, Applicant filed a third petition for a writ of habeas corpus in the federal district court (0:23-cv-01022-RBH). On June 2, 2023, that action was dismissed as successive.

CURRENT APPLICATION

On June 30, 2023, Applicant untimely filed this successive PCR application. Applicant alleges he is being held in custody unlawfully based on the following:

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- a. Ineffective assistance of counsel: counsel colluded with the State to violate my right to a fair trial by secretly modifying the State's theory of the case and supplying it with a different allegation from the one alleged in the indictment.
- b. Due process violation: The Court of Appeals violated due process when it dismissed my PCR appeal and allowed me to relieve appointed counsel and represent myself on appeal.

As relief, Applicant requests "expedited consideration of this matter, an evidentiary hearing, vacate my conviction and sentence, and such other and further relief in my favor as this Honorable Court deems just and appropriate."

On April 29, 2024, Applicant filed an amended application adding the following grounds:

1. The trial court lacked subject matter jurisdiction where the indictment failed to charge Applicant with the offense allegedly proven at trial; and the trial court erred in refusing to direct a verdict where the evidence presented by the State was insufficient to sustain a conviction of murder.
2. The State through its presentation of evidence and its modified argument and the trial court through its erroneous "hand of one is the hand of all" instructions to the jury constructively amended Applicant's indictment.

Before this Court are the Charleston County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's direct appeal (including the trial transcript); the records of Applicant's prior PCR action; the records of Applicant's federal habeas corpus petitions; and the records of Applicant's petitions in the South Carolina Supreme Court's original jurisdiction.

MOTION TO DISMISS

Respondent moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, asserting no genuine issues of material fact necessitated an evidentiary hearing. Because no questions of law or fact to necessitate a hearing, Respondent requests this Court NOT

appoint counsel and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief); See Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 (“If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will ensure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations.”); Rule 71.1(d), SCRPC (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing).²

This Court has reviewed the application and the records in this case and finds there are no genuine issues of fact to warrant a hearing. Set forth below are this Court's findings:

Statute of Limitations

This Court finds this application is barred by the statute of limitations. A PCR application “must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur” § 17-27-45(A). A motion for summary judgment may be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994).

² This Court has reviewed Applicant's requests for counsel in his letters dated October 10, 2023; October 30, 2023; December 11, 2023; and in his filings dated October 16, 2023; November 2, 2023; and June 4, 2024. This Court has also reviewed Applicant's request for an evidentiary hearing. For the reasons set forth herein, this Court finds Applicant has not set forth a basis for an evidentiary hearing and is therefore not entitled to appointment of counsel.

Here, Applicant was sentenced on December 12, 2013. He filed a direct appeal, and the remittitur was sent July 6, 2015. This PCR application was therefore due on or before July 7, 2016. This application was filed on June 30, 2023—almost seven years *after* the filing period expired. Accordingly, this application shall be summarily dismissed as untimely.³

Successive

This Court finds this application should be summarily dismissed as successive to Applicant's 2015 PCR 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 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.

Successive PCR applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or properly raised in previous applications or actions challenging these convictions. Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Aice, 305 S.C. at 450, 409 S.E.2d at 394. Grounds that could have been raised in a previous application cannot be

³ Even if Applicant's claim of error by the Court of Appeals could constitute a cognizable PCR claim—which it does NOT—the remittitur from that appeal was issued August 26, 2020, making this allegation untimely and barred by the statute of limitations.

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raised in successive applications. Id. The 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).

Here, Applicant's allegation (a) of the initial application and all allegations in the amended application could have been raised in the 2015 PCR application. Thus, this Court finds they should be dismissed as successive.⁴

[Conclusion and signature page follows]

⁴ Applicant's claim of error by the Court of Appeals is not a cognizable PCR claim because the circuit court lacks the authority to consider such error. Further, Applicant's claim that the circuit court lacked subject matter jurisdiction over his criminal conviction patently lacks merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters.").

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CONCLUSION

WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code, 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 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, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Danielle Dixon, Esquire
PCR Division – Ninth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be received by the Charleston County Clerk of Court and opposing counsel within twenty days from the date of the service of this Order, 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 5 day of August, 2024.



JENNIFER B. MCCOY
Chief Administrative Judge – Common Pleas
Ninth Judicial Circuit

Charleston, South Carolina

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ALAN WILSON
ATTORNEY GENERAL

August 22, 2024

The Honorable Julie J. Armstrong
Clerk of Court - Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: James R. Rose, #293938 v. State of South Carolina
Case No.: 2023-CP-10-03190

Dear Ms. Armstrong:

Enclosed please find the original Conditional Order of Dismissal signed by The Honorable Jennifer B. McCoy, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

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Enclosure

cc: James R. Rose, #293938