

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Robert Bernard Campbell,)
S.C.D.C. No. 131941,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-23-1870

CONDITIONAL ORDER OF DISMISSAL

FILED CLERK OF COURT
GREENVILLE CO. S.C.
BRIAN B. WICKENSIMMER
2013 OCT -1 A 11:19

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 2, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the January 1986 term of the Greenville County Grand Jury for two (2) counts of burglary (1986-GS-23-0125, -0126), attempted armed robbery (1986-GS-23-0127), two (2) counts of armed robbery (1986-GS-23-0128, -0129), two (2) counts of aggravated assault and battery (1986-GS-23-0130, -0131), two (2) counts of first-degree criminal sexual conduct (CSC) (1986-GS-23-0132, -0133), housebreaking (1986-GS-23-0134), strong armed robbery (1986-GS-23-0135), and burglary and grand larceny (1986-GS-23-0136). He was represented by Billy Long, Esquire.

On February 28, 1986, the Applicant pled guilty to two (2) counts of burglary, attempted

armed robbery, two (2) counts of armed robbery, one (1) count of first-degree CSC, and housebreaking. The State not prossed the remaining charges. He was sentenced to life imprisonment on each count of burglary, ten (10) years for attempted armed robbery, twenty-five (25) years on each count of armed robbery, thirty (30) years for one count of first-degree CSC, and ten (10) years for housebreaking. The Applicant did not appeal.

1999-CP-23-0982

The Applicant filed a PCR application on February 25, 1999 (1999-CP-23-0982). The Applicant raised the following issues:

1. All statements, comments, and confessions were taken and used without Miranda warnings and by unlawful coercion [sic] violating Petitioner's 4th, 5th, 6th and 14th Amendment rights of the U.S. Constitution.
2. Was denied lawfully required effective assistance of counsel [sic] violation of 5th, 6th, and 14th Amendment rights of the U.S. Constitution.
3. Court lacked jurisdiction [sic] violations 4th, 5th, 6th, and 14th USCA amendments Section (10) [sic].

The State argued the PCR application was untimely and the Honorable Joseph J. Watson signed a conditional order of dismissal on August 10, 1999. A hearing was convened on December 19, 2001 at the Greenville County Courthouse. Symmes Culbertson, Esquire represented the Applicant. The Honorable John W. Kittredge found the PCR application was filed after the expiration of the statute of limitations and dismissed the application by order dated February 15, 2002 and filed February 18, 2002.

The Applicant then filed a notice of appeal. Eleanor Duffy Cleary, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson¹ petition. The South Carolina Supreme Court denied the Applicant's petition for writ of certiorari by order

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

dated June 12, 2003.

2008-CP-23-8452

The Applicant filed a PCR application on November 11, 2008 (2008-CP-23-8452). The Applicant raised the following issues:

1. "Attorney misconduct and representation."
2. "False evidence and (no) DNA testing."

The State made its return on March 3, 2009, asking the court to summarily dismiss the application based on the expiration of the statute of limitations, the presumption against successive PCR applications, and the doctrine of laches. The Honorable John C. Few issued a Conditional Order of Dismissal dated July 24, 2009, and filed July 29, 2009. Although the Applicant submitted several documents in response, the Honorable Edward W. Miller issued a final order of dismissal dated April 14, 2010, and filed April 19, 2010. The Applicant did not appeal.

Federal Petition for Writ of Habeas Corpus

Applicant subsequently filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on March 11, 2010 (0:10-671-JFA-PJG). Responded submitted a motion for summary judgment on June 28, 2010. The Honorable Paige J. Gossett, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated August 23, 2010. On November 28, 2010, pursuant to the Magistrate Judge's recommendations, the Honorable Joseph F. Anderson, Jr., United States District Court Judge, issued an order granted Respondent's motion for summary judgment, denied all of Applicant's motions and declined to grant a certificate of appealability.

On June 23, 2011, Applicant filed a motion for an order authorizing the district court to

consider a second or successive application under 28 U.S.C. § 2244. The United States Court of Appeals for the Fourth Circuit filed an order on July 25, 2011 denying Applicant's motion.

II.

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

1. Ineffective assistance of plea counsel.
 - a. "Applicant would not have given up his rights to plea guilty had counsel advised him he's pleading guilty to life"
2. Involuntary guilty plea.
 - a. "Applicant asserts mental retardation"
 - b. "Applicant . . . was under psychiatric care"
 - c. "Applicant . . . was on medication at the time of the guilty plea"
3. Trial court lacked subject matter jurisdiction to impose sentences for burglary.

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 Applicant pled guilty to the offenses he challenges in this application on February 28, 1986. This application was filed on April 2, 2013, which was several years beyond the time 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.

This Court notes the Applicant has filed this application more than twenty-two (22) years after he was convicted. This Court finds the doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. 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 refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "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. at 283, 277 S.E.2d at 890-91 (citation omitted).

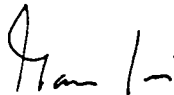
This Court finds the Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea hearing is unavailable. If the Applicant had sought post-conviction relief within a reasonable time after his guilty plea, this problem would not exist. As such, the application must be dismissed.

VI.

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 25 day of Sept., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.