

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Jimmy D. Meggs, Jr., SCDC No. 277400,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 2009-CP-21-3147

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S.C. Supreme Court
CONDITIONAL ORDER
OF DISMISSAL

CERTIFIED: A TRUE COPY
Bonnie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 18, 2009. The State indicates it received the application on or about October 15, 2012. The State now moves to dismiss the application as successive and beyond the statute of limitations. This Court finds that dismissal of the action is appropriate.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three years for each charge of contributing to the delinquency of a minor and twenty

years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

2006-CP-21-553

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed

March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed. However, the South Carolina Supreme Court denied the petition for writ of certiorari and issued a remittitur on April 5, 2010.

2009-CP-21-780

Petitioner filed his second PCR application on April 23, 2009. The State made its return and motion to dismiss on July 7, 2009. The honorable Thomas A. Russo issued a Conditional Order of Dismissal on July 9, 2009. Applicant responded to the Conditional Order of Dismissal. However, Judge Russo dismissed the application by Final Order dated May 7, 2010.

DISCUSSION

This Court finds that dismissal of this application is appropriate as it is successive and filed beyond the statute of limitations.

Successive Application

The current PCR application should be summarily because it is successive to the previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). 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 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, 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., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

Applicant alleges that the trial court never adjudicated all the issues he wished to have adjudicated in his first PCR. On its face, Applicant alleges claims that could have been raised and ruled upon by the PCR court in the first application. Accordingly, this application should be dismissed.

Statute of Limitations

Further, this PCR application should also be 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 (Supp. 2003). S.C. 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. 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 August 9, 2001. The Applicant was therefore required to file his application before August 9, 2002. This application was filed more than seven 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. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). 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, this Court finds it should summarily dismiss the current PCR application for failure to file within the time mandated by the Post Conviction Procedure Act.

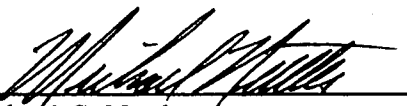
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed 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. The Applicant shall file any reasons he may have


with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

David Spencer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED!



Michael G. Nettles
Chief Administrative Judge
12th Judicial Circuit

, South Carolina
1-28, 2013

