

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
 COUNTY OF ANDERSON)
)
 Anthony Leroy Marlar,)
 S.C.D.C. No. 242361,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

Case No.: 2016-CP-04-01333

CONDITIONAL ORDER OF DISMISSAL

2017 JUN 11 AM 9:58
 COMMON PLEAS AND
 GENERAL SESSIONS

FILED-CLERK'S OFFICE
 ANDERSON SC

This matter comes before the Court by way of an application for post-conviction relief filed by Anthony Leroy Marlar (Applicant) on June 13, 2016. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is 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 August 1996 term of the Anderson County Grand Jury for criminal sexual conduct in the first degree (1996-GS-04-02026) and burglary in the first degree (1996-GS-04-02027). Bruce Byrholdt, Esquire, represented Applicant. On July 7, 1997, Applicant proceeded to trial before the Honorable H. Dean Hall and a jury. The jury found Applicant guilty as indicted. Judge Hall sentenced Applicant to imprisonment for consecutive terms of thirty years for burglary and twelve years for criminal sexual conduct.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, by filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and the appeal was dismissed. Following Applicant's

pro se petition for rehearing, the South Carolina Court of Appeals instructed the parties to brief two issues, and ultimately affirmed Applicant's convictions and sentence. State v. Marlar, 2000-UP-361 (S.C. Ct. App. filed May 15, 2000). The Remittitur was issued on June 1, 2000.

2000-CP-04-2026

Applicant filed his first application for post-conviction relief on August 18, 2000. He alleged the following grounds for relief in his application and subsequent amendments thereto:

1. Ineffective Assistance of Counsel for failing to properly prepare a defense, failure to call witnesses, and failure to properly cross examine State's witnesses;
2. Brady¹ violation

Respondent made its return on or about December 31, 2001, and an evidentiary hearing into the matter was convened on January 29, 2003, before the Honorable J.C. Nicholson, Jr. Applicant was present at the hearing and represented by Carey Murphy, Esquire. Bryan Dukes, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By written order dated September 30, 2003, and filed October 1, 2003, Judge Nicholson denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Robert M. Dudek, Esquire, of the South Carolina Office of Appellate Defense on Applicant's behalf. Respondent filed its Return on July 15, 2004. The case was then transferred to the South Carolina Court of Appeals, and oral arguments were convened on September 14, 2006. On March 26, 2007, the Court of Appeals vacated the denial of PCR relief and remanded for a new PCR hearing. Marlar v. State, 373 S.C. 275, 644 S.E.2d 769 (S.C. Ct. App. 2007). The State petitioned for rehearing, which was denied on May 17, 2007. The State then filed a Petition for Writ of Certiorari with the South Carolina Supreme Court dated June 15, 2007, and Applicant

¹ Brady v. Maryland, 373 U.S. 83 (1963).

filed a Return on September 21, 2007. By Order dated November 5, 2007, the South Carolina Supreme Court granted the State's petition, dispensed with further briefing, and reversed the decision of the Court of Appeals. Marlar v. State, 375, S.C. 407, 653 S.E.2d 266 (2007). The Remittitur was issued on November 21, 2007.

2:08-cv-1874-RBH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on May 14, 2008. In his Petition, Applicant set forth the following grounds for relief:

1. Trial counsel was ineffective for failing to call an investigator to testify about potentially exculpatory crime scene hair evidence;
2. Conviction was obtained by unconstitutional DNA procedures and the Court of Appeals failed to make a proper ruling;
3. PCR judge failed to uphold the integrity of the judiciary;
4. Due process and Sixth Amendment violations.

Respondent filed its Return and Motion for Summary Judgment on August 22, 2008. The Honorable Robert S. Carr, United States Magistrate Judge, issued on September 25, 2008, a Report and Recommendation that Respondent's motion be granted. The Honorable R. Bryan Harwell, United States District Judge, denied Applicant's Petition on December 4, 2008, and accepted the Report and Recommendation for summary judgment. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals on December 17, 2008 and filed his brief on September 17, 2010. The Fourth Circuit Court of Appeals dismissed Applicant's appeal on May 25, 2011. Marlar v. Warden, Tyger River Correctional Inst., 432 Fed.Appx. 182 (4th Circ. 2011).

Applicant subsequently filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied on October 31, 2011.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Violation of due process

- a. "On 3/24/03, my sentence was enhanced to 85% according to SCDC files. This is six years after the judge imposed sentence, which was under 1993 guidelines."

Applicant requests relief as follows:

- Enforcement of judge's sentencing order under 1993 guidelines only;
- To be awarded credits earned;
- Not having to register as a sex offender.

Also before this Court are the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR action, Applicant's state and federal appellate records, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds this Application must be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act because credit-related claims or challenges to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. See S.C. Code Ann. § 17-27-20 (2016). Post-conviction relief is a proper avenue of relief only when Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742,749 (2000). A credit-related claim or challenge to other conditions of confinement is an administrative matter and, thus, cannot be raised in a post-conviction relief proceeding. Id. These administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Id. at 369, 527 S.E.2d at 750. Likewise, a challenge to the conditions upon which parole eligibility is

determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (“Since petitioner’s *ex post facto* claim is not a collateral attack on the validity of his conviction or sentence, it is not cognizable under the PCR statute.”).

This Court finds Applicant’s complaint regarding the Department of Corrections’ (SCDC) calculation of his sentence is an administrative matter not proper for post-conviction relief. The statutory right to sentence-related credits is a protected liberty interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539, 557 (1974). Because SCDC’s disciplinary and grievance procedures are consistent with the standards delineated in Wolff, inmates may seek review of such claims under the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. at 375, 547 S.E.2d at 753.

This Court finds Applicant’s allegations all concern matters which should first be raised through SCDC’s disciplinary or the grievance procedure through the Department of Probation, Parole, and Pardon Services (DPPPS). If Applicant is dissatisfied with the decision rendered by SCDC or DPPPS, then he may seek review of the decision under the APA. Therefore, this claim is not proper for post-conviction relief, and this application for post-conviction relief must be summarily denied and dismissed.

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 A. McCallister, 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 7 day of July, 2017.



J. CORBELL MADDOX, JR.
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

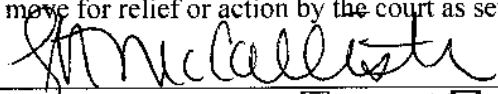
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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
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 COUNTY OF ANDERSON)
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ANTHONY L. MARLAR, #242361)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 CASE NO: **2016-CP-04-01333**

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

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 ANDERSON SC
 2017 JUL 11 AM 8:57
 COMMON PLEAS AND
 GENERAL SESSIONS

Plaintiff's Attorney: Anthony L. Marlar, #242361, (Pr Se) Address: Tyger River Correctional Institution 200 Prison Road Enoree, SC 29335-9308 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Lindsey A. McCallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	April 6, 2017 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	