

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

Anthony L. Marlar,)
)
) Case No.: 2016-CP-04-01333

Applicant,)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed by Anthony L. Marlar (Applicant) on June 13, 2016. Respondent moved to summarily dismiss this application as barred by the statute of limitations, for failure to state a cognizable claim, successive, and barred by the doctrine of laches. On July 11, 2017, The Honorable J. Cordell Maddox, Chief Administrative Judge, issued a Conditional Order of Dismissal. A hearing into this matter was held on October 29, 2025, at the Oconee County Courthouse, before the Honorable R. Lawton McIntosh. Applicant was present and represented himself. Assistant Attorney General Ryan T. Kowalski represented Respondent. This Court finds that the application was untimely filed, is successive, and fails to state a cognizable PCR claim. This Court grants Respondent's motion to dismiss the application and dismisses the application with prejudice.

PROCEDURAL HISTORY

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. *Brady*¹ violation

The State 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 the State. 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

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

behalf. The State filed its Return on July 15, 2004. 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 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.

The State 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 the State's motion be granted. The Honorable R. Bryan Harwell, United States District Judge, denied Applicant's Petition on December 4, 2008, and accepted and adopted 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.

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.”²

Applicant requested 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.

On March 2, 2022, a motion to dismiss hearing was held over WebEx before the Honorable William P. Keesley. The record was left open for Respondent to provide supplemental materials to Judge Keesley. Applicant subsequently filed a *pro se* amended application on April 15, 2022 alleging the following:

1. Ineffective Assistance of Trial Counsel
 - a. “Based on the fact that the South Carolina Court of Appeals vacated and remanded the applicants issues back to the PCR court with instructions and the 4th Circuit Court of Appeals ruled that the applicant’s issues were not procedurally barred. Applicant seeks rulings.”

Upon receipt of the supplemental materials, Judge Keesley filed an order for a *de novo* hearing on the State’s motion to dismiss on February 27, 2025.

² At the hearing on the State’s motion to dismiss, Applicant withdrew this allegation.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's previous PCR action, Applicant's state and federal appellate records, and the records of this current PCR action. In analyzing these claims, this Court has considered the legal arguments by counsel and Applicant and thoroughly reviewed the record in its entirety. Upon conducting and completing its analysis, this Court finds that the application must be dismissed in its entirety. Summary dismissal of a claim is appropriate if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. S.C. Code Ann. § 17-27-70(b)-(c) (2014); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). When considering the State's motion for summary dismissal, the Court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495.

Statute of Limitations

Pursuant to the Act, a PCR application "must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur, whichever is later." § 17-27-45(a). The statute of limitations applies to all PCR applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). "If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed *within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.*" S.C. Code Ann. § 17-27-45(C) (emphasis added). 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).

In the present case, Applicant failed to timely file his PCR application within a year of sentencing as required by the Act. Applicant was convicted and sentenced on July 7, 1997. Applicant appealed his conviction for which the Remittitur was returned June 1, 2000. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before June 1, 2001. Applicant did not file this PCR application until June 13, 2016, over *fifteen years* beyond the statute of limitations. At the hearing, Applicant alleged that his application is not untimely because he is still awaiting rulings from the Circuit Court pursuant to the South Carolina Court of Appeals decision reversing the denial of relief. However, the South Carolina Supreme Court reversed the decision of the Court of Appeals. *Marlar v. State*, 375, S.C. 407, 653 S.E.2d 266 (2007). Accordingly, this application is untimely pursuant to S.C. Code Ann. § 17-27-45 and is summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successiveness

This Court further summarily dismisses the application because it is successive to Applicant's previous 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). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* 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.* 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).

At the hearing, Applicant alleged that the Fourth Circuit ruled that additional future PCR claims were not procedurally barred. However, the Fourth Circuit ruled that Applicant's federal habeas claims were not procedurally barred at that time and proceeded to rule on the merits of Applicant's claims, which they ultimately dismissed. *Marlar v. Warden, Tyger River Correctional Inst.*, 432 Fed. Appx. 182 (4th Circ. 2011).

Therefore, Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR application; thus, the current application is successive and barred under S.C. Code Ann. Section 17-27-90. Applicant has failed to establish any sufficient reason why Applicant could not raise his current allegations in his previous PCR action. Accordingly, this Court summarily dismisses the application as successive to Applicant's previous PCR action.

Failure to State a Cognizable Claim

Respondent moved to summarily dismiss the application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. At the hearing on the State's motion to dismiss, Applicant alleged he was actually innocent. Applicant's allegation of actual innocence does not support a cognizable claim for post-conviction relief under any of the statutory grounds.³ Claims by an applicant that he is actually innocent, is not guilty, or that the evidence against him was insufficient to prove guilt, are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) (“[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as

³ See S.C. Code Ann. § 17-27-20(A).

barring such claims as inappropriate for consideration under the act). Therefore, this Court summarily dismisses the application for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require an evidentiary hearing to be held or that would entitle Applicant to post-conviction relief. Therefore, this application for post-conviction relief is summarily **DISMISSED with PREJUDICE**.

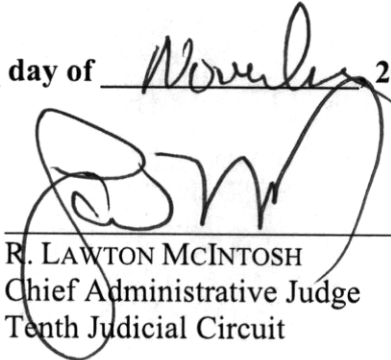
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on Applicant's behalf if Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief shall be summarily dismissed with prejudice.

AND IT IS SO ORDERED this 24 day of November 2025.

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Anderson, SC COC, CP/GS



R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina