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OCT 25 2013

IN THE COURT OF COMMON PLEAS

S.C. SUPREME COURT

2013-CP-26-0324

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Alan C. Debnam, 177313,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**CONDITIONAL
ORDER OF DISMISSAL**

**HORRY COUNTY
13 APR 11 PM 1:41
MELANIE HUGGINS-WARD
CLERK OF COURT**

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 14, 2013. Respondent made a timely Return, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. Applicant was indicted at the April 1991 term of the Horry County Grand Jury for murder and unlawful neglect of a minor child (91-GS-26-783). Jeff Bloom and Frederick Harris, Esquires, represented Applicant. On May 1, 1991, Applicant proceeded to trial by jury and was found guilty of murder. The Honorable Sidney T. Floyd sentenced Applicant to life imprisonment.

Applicant filed an appeal to the South Carolina Supreme Court and was represented by Tara Dawn Shurling, Esquire. On July 19, 1993, the SC Supreme Court affirmed Applicant's conviction and sentence in opinion No. 93-MO-201.

Applicant filed an application for post-conviction relief on January 10, 1996. Respondent made a timely Return, and thereafter Applicant filed an Amended Application on April 11, 1997. An evidentiary hearing was held on November 17, 1997 at the Horry County Courthouse and Applicant was represented by Lisa G. Echols, Esquire. The Honorable David M. Maring, Sr. denied Applicant's PCR Application in an Order of Dismissal filed April 9, 1998.

Applicant then filed an appeal and a Motion for Remand based upon a conflict of interest, alleging that since Ms. Shurling represented Applicant on direct appeal, a conflict of interest arose when Ms. Shurling's firm thereafter accepted appointment of counsel for the post-conviction relief proceeding. The SC Supreme Court granted Applicant's Motion to Remand on November 6, 1998, granting Applicant a new hearing. Applicant did not file a return and Respondent submitted a Motion to Reconsider, which was granted by the SC Supreme Court on December 21, 1998.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel, in violation of 6th Amendemtn to the United States Constitution, Applicable to the States through the 14th Amendment."

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations and is successive.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). The Act 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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

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). Applicant's conviction was May 1, 1991. This application was filed beyond the time the statutory filing period 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 PCR 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, the Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

Successiveness

The current Application is successive to the previous application for post-conviction relief, filed on January 10, 1996. Successive applications for post-conviction relief are strongly 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." [Emphasis in original]. 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, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

CONCLUSION


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 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, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

26 day of MARCH, 2013.

Cowley, South Carolina.



Honorable Larry B. Hyman, Jr.
Chief Administrative Judge
15th Circuit

ALAN C. DEBNAM*177313

21 OCTOBER 13

B.R.C.L./MONTICELLO*144

4460 BROAD RIVER RD.

COLUMBIA, S.C. 29210

THE SUPREME COURT OF SOUTH CAROLINA

THE HONORABLE DANIEL E. SHEAROUSE

CLERK OF COURT

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S.C. SUPREME COURT

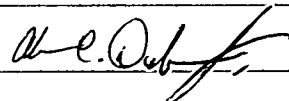
RE: APPELLATE CASE NO. 2013-002194

DEAR MR. SHEAROUSE,

I AM HONORING YOUR REQUEST I RECEIVED ON
THE 18TH OF OCTOBER, 2013 FOR A COPY OF THE 'CONDITIONAL ORDER OF
DISMISSAL' DATED 11 APRIL 13. IF THERE ANYTHING ELSE I MIGHT NEED TO
PROVIDE FOR YOU PLEASE LET ME KNOW.

THANK YOU FOR YOUR ASSISTANCE.

SINCERELY,



ALAN C. DEBNAM*177313

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U.S. SUPREME COURT

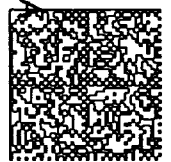
ALAN C. DEBNAM# 177313
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THE SUPREME COURT OF SOUTH CAROLINA
c/o THE HONORABLE DANIEL E. SHEAROUSE
CLERK OF COURT
P.O. BOX 11330
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THE DEPARTMENT OF CORRECTIONS HAS RETURNED
THE ITEM TO THE SENDER.