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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 Anthony Wilder, #328282, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 20<sup>19</sup>CP-10-00813

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
 2020 JUN 10 PM 12:57  
 JUDGE D. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

Respondent, making its Return to the application for post-conviction relief (PCR) filed by Anthony Wilder ("Applicant") on February 19, 2019, would respectfully show this Court

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In March 2008, the Charleston County Grand Jury indicted Applicant for murder (2008-GS-10-02383), first degree burglary (2008-GS-10-02385), assault and battery with intent to kill (2008-GS-10-02386), and two counts of kidnapping (2008-GS-10-02384, -02390). Lionel S. Lofton and V. Lynn Lofton, Esquires represented Applicant. Assistant Solicitors Nathan Stuart Williams and Julie Cardillo, Esquires prosecuted the case. On May 5, 2008, Applicant proceeded to a jury trial before the Honorable J. Derham Cole. The jury found Applicant guilty as indicted. On May 9, 2008, Judge Cole sentenced Applicant to life imprisonment for murder, life imprisonment for first degree burglary, twenty years for assault and battery with intent to kill, and thirty years for kidnapping.<sup>1</sup>

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on

<sup>1</sup> Applicant was not sentenced on the other count of kidnapping because the victim was murdered.

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August 9, 2011. State v. Wilder, Op. No. 2011-UP-385 (S.C. Ct. App. filed August 9, 2011).

Applicant filed a petition for rehearing which was denied on November 17, 2011. Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court on December 29, 2011. On March 20, 2013, the South Carolina Supreme Court denied the petition. The remittitur was issued on April 9, 2013.

2013-CP-10-5655

The Applicant subsequently filed an application for PCR on September 25, 2013, in which he alleged the following grounds for relief:

- 1. Ineffective Assistance of Counsel
  - a. Counsel did not object to hearsay testimony
- 2. Prosecutorial Misconduct
  - a. Allowed a State witness to commit perjury in trial testimony

Respondent filed its return on February 19, 2014. An evidentiary hearing into the matter was convened on December 15, 2015, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Naki Richardson-Bax, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On July 26, 2016, the Honorable Deadra L. Jefferson, issued the order of dismissal denying Applicant's application for post-conviction relief.

On March 8, 2017, John H. Strom, Esquire of the South Carolina Commission on Indigent Defense, filed a Johnson<sup>2</sup> petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. The South Carolina Supreme Court ordered the case transferred to the South Carolina Court of Appeals on October 30, 2017. On September 8, 2018, by written order the South Carolina Court of Appeals denied the petition. Applicant filed a motion for rehearing on September

<sup>2</sup> Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

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25, 2018. On October 18, 2018, the South Carolina Court of Appeals denied the motion. The Remittitur was issued on November 28, 2018.

## **II. CURRENT APPLICATION**

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

1. Ineffective Assistance of Counsel
  - a. "failing to object to in court identification that was very prejudicial to affiants defense,"
  - b. Failure to investigate "by not consulting with an independent expert witness to support the defense theory that the DNA evidence showing the decedent's blood on affiants clothes was contaminated by law enforcements improper evidence handling,"
  - c. Failure to object "to admittance of evidence a mask State's No. 113 and a glove State's No. 114 where there was a missing link in the chain of custody,"
2. Newly Discovered Evidence
  - a. "a visible impression of the Great Seal could not be located on the following acts: 1993 Act No. 184, 1995 Act No. 7, 1996 Act No. 317, 1998 Act No. 402, and 2002 Act No. 278."

Before this court are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, records from Applicants previous PCR actions, and the current application.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Statute of Limitations**

The Court finds that this application must 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. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). 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) 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.”

Applicant was convicted and sentenced on December 6, 1996. The remittitur from the direct appeal was issued on December 10, 1998. The application was therefore due on December 11, 1999. This application was filed on September 19, 2018, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

#### **Successive Applications**

The Court further finds the application must be summarily dismissed 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). Section 17-27-90 of the South Carolina Code 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 indicate 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. at 450. 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous PCR application.

#### **Newly Discovered Evidence**

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to vacation of his sentence and immunity, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief 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).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

“(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant alleges in support of his claim of newly discovered evidence Article III, Section 18 of the South Carolina Constitution, “No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it...” Applicant alleges there is no visible impression of the Great Seal on the following Acts he was convicted of: 1993 Act No. 184, 1995 Act No. 7.

The South Carolina Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324; 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by

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the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of SC v. Medical Univ. of SC, 334 SC 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort Cty v. Jasper Cty, 220 S.C. 469, 487, 68 S.E.2d, 421, 430 (1951); State v. Town Council of Chester 39 S.C. 307, 17 S.E. 752, 755 (1893)(“when the bill...is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable). There has not been a court to address this question directly in South Carolina. However, other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See Taylor v. Wilson, 22 N.W. 119 (Neb. 1885)(citing Cottrell v. State, 1 N.W. 1008 (Neb. 1879)); See Commr's of Leavenworth Co. v. Higginbotham, 17 Kan. 62 (1876). Additionally, the South Carolina Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). The Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. Id.

Additionally, Section 2-7-45 of the South Carolina 1976 Code states:

“The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.”

The South Carolina Supreme Court has held that codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. SC Tax Comm'n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts had substantial compliance with the requirements and were codified into the 1976 Code, thus making them enforceable.

Furthermore, in the alternative, Applicant's discovery of the missing Great Seals under Article III, Section 18 does not constitute newly discovered evidence. This evidence was discoverable prior to the entry of the plea. By entering a guilty plea, Applicant waived his right to present any and all defenses that he may have had, and he certainly cannot raise them now in his current application for post-conviction relief under the guise of "newly discovered evidence".

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

#### 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 (20) 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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Benjamin Limbaugh, Esquire  
PCR Division - 9th Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

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Applicant is cautioned that his response to this order must be actually received by the Charleston County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 1 day of July, 2020.

  
JENNIFER B. MCCOY  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina