

RECEIVED

DEC 19 2013

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

Dwight Sullivan #309653,

2013 11 20 P 1:18

2013-CP-30-0380

Applicant,

LAURENS COUNTY

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before this Court by way of an application for post-conviction relief filed May 13, 2013. The State made its Return and Motion to Dismiss on July 23, 2013. In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted at the October 2003 term of the Laurens County Grand Jury for Burglary, two counts of Murder, and Possession of a Weapon during the Commission of a Violent Crime (2003-GS-30-0764). James H. Price, III, Esquire, and Ryan L. Beasley, Esquire represented him. On June 6-9, 2005, the Applicant proceeded to trial pursuant to which he was found guilty as indicted. The Honorable William P. Keesley sentenced the Applicant to confinement for a period of thirty (30) years for Burglary-1<sup>st</sup> Degree, and to life without parole for both counts of Murder, sentences running concurrently. The sentence for Possession of a Weapon during the Commission of a Violent Crime was subsumed under S.C. Code Ann. §16-23-490(A).

SEP 11 5

ATTORNEY GENERAL'S OFFICE  
RECEIVED 8/21/13  
ADMINISTRATIVE INSURANCE  
FILE  
HAVE  
ROUTE TO  
ORDER  
PEN RECORDS  
OTHER: send to SCAC  
for source

8/21/13  
Tob

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Sullivan, Op. No. 2007-UP-508 (S.C. Ct. App. filed October 30, 2007). The Remittitur was issued on November 15, 2007.

**2008-CP-30-0330**

The Applicant subsequently filed an application for post-conviction relief (PCR) on April 1, 2008. The State filed its Return on or about October 14, 2008. An evidentiary hearing was convened on March 30, 2009, at the Newberry County Courthouse, at which the Applicant was present and represented by M. Rita Metts, Esquire. On February 26, 2010, the Honorable Thomas A. Russo denied and dismissed the Applicant's application.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected. This appeal is currently pending.

**8:13-876-TMC-JDA**

The Applicant thereafter filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on April 4, 2013. This action is currently pending.

In his current application for PCR, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel pursuant to Lafler v. Cooper"
  - a. "Pleas offer was rejected on the advice of counsel and I went to trial and got sentence to life consecutive."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that the current application for post-conviction relief must be summarily

dismissed because it is successive to her prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90.<sup>1</sup> The Applicant has failed to establish sufficient reason why he could not have raised her current allegations in her previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon her. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

<sup>1</sup> To the extent Applicant argues Lafler v. Cooper, 132 S.Ct. 1376 (2012) was not available when he filed his first PCR, Lafler was published on March 21, 2012 and thus, he would have had to file this application within one year of its publication (see S.C. Code Ann. § 17-27-45(c)). This Application was not filed until May 13, 2013.

JEH  
3/5

This Court finds, further, that this Application for Post-Conviction Relief should 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. 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 judgement 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 offense(s) he challenges in this Application on June 9, 2005. The Remittitur after the Applicant's unsuccessful appeal was issued on November 15, 2007. The Applicant was therefore required to file his application by November 16, 2008. This Application was filed on May 13, 2013, which well after the statutory filing period had expired.

A motion for summary judgement 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) (2003) 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 judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

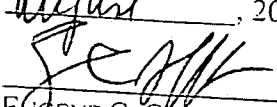
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should

SEAL 4/5

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

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 16<sup>th</sup> day of August, 2013.

  
EUGENE C. GRIFFITH, JR.  
Chief Administrative Judge  
Eighth Judicial Circuit

Norbury, South Carolina

A TRUE COPY OF ORIGINAL  
Lynn W. Lancaster  
Lynn W. Lancaster  
Laurens County CCCP & GS

8/2 5/5