

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Steven Collins,)
S.C.D.C. NO. 141257,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA)
Respondent,)

IN THE COURT OF COMMON PLEAS
C/A NO: 2013-CP-23-2300

ENTERED COMPUTER

OBJECTION TO THE CONDITIONAL
ORDER OF DISMISSAL

FILED - CLERK OF COURT
GREENVILLE CO. SC
PAUL J. BERRY
2013 SEP 23 PM 3:26
JW

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 2013. In this current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel. (a) "received ineffective assistance of counsel pursuant to Lafler v Cooper by rejection of plea offer and receiving LWOP."

The Respondent states, "this court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10. et. seq. (2003). Specifically, South Carolina 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 judgment of conviction or within one years after the sending of the remittitur to the lower court from an appeal or the final decision upon an appeal, whichever is latter." The Applicant, objects because the respondent makes no mention of S.C. Code Ann. §17-27-45 (c) (2003). If the applicant contends that there is evidence, of material fact not previously presented and heard that requires vacation of the conviction or sentenced, the application must be filed under this chapter 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.

The Respondent alleges, the South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloguin v State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application of September 13, 2006, and the South Carolina Court of Appeals dismissed the appeal on October 14, 2009. The Applicant was therefore required to filed his application before October 14, 2010. This application was filed on April 24, 2013, which was more than two years after the statutory filing period had expired. The Applicant object, while the foregoing is true, the Applicant

discovered lafler v Cooper, No. 10-209, decided March 21, 2012 in November 2012 which makes this application timely, because this application was filed within one year after the actual discovery of the fact. S.C. Code Ann. §17-27-45(c).

The Respondent alleges, a motion for summary judgment may properly be used to raise the defense of statute of limitation. See McDonnell v Consolidated Sch. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638,639 (1994). In addition, S.C. Code Ann. §17-27-70(c) authorized 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 that the moving party is entitled to judgment as a matter of law." Applicant objects, because he was sentence to current terms of life without parole for armed robbery and five years for the weapons charge, and in Lafler v Cooper the judgment of the court can be open, and the life without parole sentence vacated. The Plea offer for (30) thirty years is on App. p. 472, lines 20-25. and counsel's conduct is on App. p. 472, lines 20-25, p. 473 lines 1-25 and p. 474 lines, 1-22. This calls for a post conviction relief hearing. More important there is a genuine issue of material fact whether counsel was ineffective according to Lafler v Cooper and if the judgment of the court would have been less severe than the judgement and sentenced that

in fact were imposed. Summary judgment is not appropriate when further inquiry into the facts is desirable to clarify the application of law. Rules of Civ Pro. Rule 56 (c). McKnight v S.C.D.C., 385 S.C. 380, 684 S.E.2d 566 (S.C. App. 2009). In determining whether a genuine issue of facts exist, the evidence and all reasonable inferences drawn from it must be view in light most favorable to the non-moving party. Sauner v Pub. Serv. Auth. of S.C. 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

S.C. Code Ann. §17-27-70(b) (2003) noting summary dismissal of a PCR application without a hearing is appropriate only when it is apparent on the fact of the application that (1) there is no need for a hearing to develop any fact and (2) the Applicant is not entitled to relief. S.C. Code Ann. §17-27-45(c) is not valid in this case for the reasons stated above.

The Responden alleges, this Court further finds current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. §17-27-90 (2003) states:

All ground 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 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 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 application 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, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in previous application. 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. Applicant object, Lafler v Cooper was decided March 21, 2012, which makes it impossible to put this claim in a December 10, 2009 (2009-CP-23-10469) application. Finally, a successive application may be permitted where the Court's refusal to hear the claim would constitute a "gross miscarriage of justice," because the Cooper case was reasonable unavailability of the factual basis of the claim impeded counsel's ability to raise the claim, and the case was printed in April of 2012, and there is no way to amend my previous PCR application on appeal.

The Applicant withdraw ground 2. Ineffective assistance of PCR counsel. The only claim before this Court is ground one.

CONCLUSION

Wherefore, having objected to the summary dismissal Applicant prays for an hearing on this claim.

Respectfully submitted

August 31st 2013

Steven Collins

Steven Collins,

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1 go anywhere. But he told me that I needed to go
2 ahead and try to find somebody to advocate where I
3 was at what time. Because they had me on house
4 arrest, I couldn't find anybody. Everybody that I
5 knew was either out of -- out at night or at
6 nightclubs or whatever and I wasn't allowed to go in
7 that environment anymore.

8 Q Okay, I'm just trying to find out when you understood
9 you faced life without parole?

10 A It was actually that Saturday that I spoke with him
11 in his office.

12 Q Okay. What date was that Saturday, was it a week
13 before your trial, 10 days before your trial?

14 A It was like maybe three days. Because it went that
15 following Monday.

16 Q And that Saturday, three days before your trial is
17 the first time you and Mr. Gibson discussed life
18 without parole?

19 A Yes.

20 Q What was the plea offer that the State gave you?

21 A They offered me 30 years, 85 percent.

22 Q Okay. When did they make that offer to you?

23 A When they came with the -- when they said they were
24 going to seek life without parole, they said if I
25 didn't take the 30 years, 85 percent, that's what

- 1 they were going to give me.
- 2 Q Okay. Did you discuss that with Mr. Gibson?
- 3 A Well we never did discuss as far as taking the 30
- 4 year plea, no.
- 5 Q Did he advise you to take the plea or to turn the
- 6 plea down?
- 7 A No.
- 8 Q What did he advise you to do, anything?
- 9 A He didn't advise me to turn the plea down. He waited
- 10 to see whether I wanted to testify on my own behalf.
- 11 After I took -- testified on my own behalf -- well
- 12 the way he said it, we were looking for a favorable
- 13 outcome. This was at the trial. And afterwards they
- 14 said life without parole, they found me guilty, so.
- 15 Q How many times did you and Mr. Gibson discuss the 30
- 16 year offer?
- 17 A Just once.
- 18 Q Okay --
- 19 A That once.
- 20 Q What was his advice?
- 21 A He told me that I need to find the people to be my
- 22 alibi, I need to find those people that I had said
- 23 was going to be my alibi.
- 24 Q Did he advise you take the 30 year plea offer?
- 25 A No.

1 Q All right. Did you know at that point when you
2 turned down the 30 years, did you know that you faced
3 life without parole?

4 A I didn't know that they weren't going to give me an
5 opportunity to change my plea or they weren't going
6 to give me an opportunity to go and find people to
7 help me with my trial.

8 Q Okay. If you'd known that you wouldn't have the
9 opportunity to change your plea and take the 30 year
10 offer, what would you have done differently?

11 A I would have took the 30 year offer.

12 Q Okay. All right. Did Mr. Gibson explain to you that
13 you would only have that opportunity? That your
14 opportunity to take the 30 year offer wouldn't last
15 forever?

16 A No.

17 Q Did you and Mr. Gibson talk about a plea expiration
18 date?

19 A No.

20 Q Did you know that your plea offer ever expired?

21 A No. The only thing I knew was that when I came to
22 trial that was it.

23 Q Okay. All right. Now, during the case or during the
24 trial, there were some fingerprints that were
25 discussed that came into evidence, is that correct?

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he mailed the foregoing objection to Summary Dismissal to Ms. Karen C. Ratigan, Counsel for respondent and Mr. D. Garrison Hill Chief Administrative Judge and Mr. Paul B. Wickensimer, Greenville County Clerk of Court this 9th day of September 2013, by depositing same in the U.S. mail at McCormick mail-room.

Steven Collins
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