

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Antonio Kinloch, SCDC #219914,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No. 2020-CP-10-04384

**CONDITIONAL ORDER
OF DISMISSAL**

2020 AUG 15 AM 10:21
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Antonio Kinloch (Applicant) on October 5, 2020. Respondent made its return and moved to dismiss the action as untimely and successive. After consideration, Respondent's motion to dismiss is granted.¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In July 1994, the Charleston County Grand Jury indicted Applicant for murder (94-GS-10-03523). In June 1995, Applicant proceeded to a jury trial before the Honorable Don S. Rushing. Applicant was represented by Tara D. Thompson, Esquire. The jury convicted Applicant as indicted, and Judge Rushing sentenced him to life. Applicant appealed. Following a review pursuant to Anders v. California, 386 U.S. 738 (1967), the Court of Appeals dismissed Applicant's appeal. The remittitur was sent May 8, 1997.

¹ The return was due to be filed within 90 days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application"); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the circuit court, and the court may extend the time for filing).

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First PCR Application: 1997-CP-10-03996

On August 19, 1997, Applicant filed his first application for post-conviction relief. In this application, Applicant alleged ineffective assistance of counsel based on the following:

1. Counsel failed to object to the faulty charge on reasonable doubt.
2. Counsel failed to object to the faulty charge on voluntary manslaughter.
3. Counsel failed to object to the intent to kill instruction.
4. Counsel failed to locate and call witnesses on his behalf, such as Otis S. Harper and Larry O. Franklin.
5. Counsel failed to engage in pre-trial discovery.
6. Counsel requested a faulty charge on reasonable doubt.

On June 3, 1999, an evidentiary hearing was held before the Honorable Paul E. Short. Applicant was present and represented by Harry L. Devoe, Jr., Esquire. Respondent was represented by Assistant Attorney General Matthew M. McGuire. On October 5, 1999, Judge Short issued an order denying the application. Applicant filed a petition for writ of certiorari, which was denied. The remittitur was sent August 28, 2001.

First Federal Habeas Petition: 8:02-3414-24BI

On October 10, 2002, Applicant filed a petition for a writ of habeas corpus in the federal district court alleging various grounds of ineffective assistance of counsel. On February 20, 2004, the court dismissed the petition as untimely.

Second Federal Habeas Petition: 2:16-cv-03773-MBS-MGB

On January 17, 2017, Applicant filed a second petition for a writ of habeas corpus in the federal district court. The federal magistrate issued a report and recommendation recommending dismissal without prejudice due to Applicant's failure to obtain authorization from the Fourth Circuit Court of Appeals to file a successive petition. The petition was dismissed August 22, 2017.

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CURRENT APPLICATION

On October 5, 2020, Applicant untimely filed this successive PCR application alleging:

Lack of subject matter jurisdiction:

- a. Indictment was improperly amended to allege the victim's name.
- b. State witnesses Cedrick Myers and Eric Coaxum "never stood before the jurors to see if they were related by blood or marriage," causing the jury to be tainted.
- c. Indictment did not have Applicant's proper name.

As relief, Applicant requests "the Court recognize all the errors by law and look over this case because I'm innocent and this case is self defense so I prayed to be free or a new trial."

On November 25, 2020, Applicant filed a motion to amend allegations, wherein he alleged:

1. The Court lacked subject matter jurisdiction due to one of the jurors speaking with members of the victim's family. This violated the Fifth, Sixth, and Fourteenth amendment. See tr. 67, 121, 181, 189.
2. The judge made errors during trial, including denying counsel's motion to cover up the words "Victim" and "Murder" on a folder that Detective Maxwell had during his testimony. See tr. 68-69.
3. The Court lacked subject matter jurisdiction when numerous jurors were police officers, related to police officers, knew about the crime or had heard about it, were related to the victim, and/or were the victim of a violent crime or knew someone who had been a victim of a violent crime. This violated the Fifth, Sixth, and Fourteenth amendment. See tr. 11-17, 22-37.
4. The Court lacked subject matter jurisdiction when one of the jurors admitted to having an issue with the black race and of being a victim of crimes committed by the black race The judge refused trial counsel's request to address the race issue before the other jurors to see if any of them don't like the race of the black people. This violated the Fifth, Sixth, and Fourteenth Amendment. See tr. 29-31, 37-38.

5. The Court lacked subject matter jurisdiction due to a fatal variance of allegations and proof at trial and in the original indictment return from the grand jury. Specifically, the solicitor moved to amend the victim's name from Eddie Palmer to Eddie Pharoah Palmer. This violated the Fifth, Sixth, and Fourteenth Amendment. See Tr. 257-59, 443-44, 553-54.
6. This was a case of self-defense. Many people have told Applicant that they watched him on the night of this incident and he didn't shoot and kill Eddie Palmer. But these people are from Mount Pleasant, SC, and don't want to get in between this because the Palmer family has strong influence throughout Mount Pleasant and Charleston County. Kayla and Kelly Lineyard were the girls calling Applicant's name to warn him that their homeboy was about to hurt him. Kayla has died. Kelly Lineyard is still alive and is related to the victim Eddie Palmer. Kayla, "I wrote you and you didn't kill my cousin Eddie Palmer but if I help you my family will harm me or turn away from me. Because I went to them after the incident happen and told them you're innocent." Phone records from 1995 will show calls from Kelly Lineyard to Applicant. Applicant attempted to get Kelly and Kayla to testify but they refused out of fear. Kayla also told this to Applicant's sister Bakari Kinloch while she was serving time in a juvenile facility around 1995-1998.
7. Applicant is a businessman. His codefendants had to go to Florida to get drugs. His codefendants were schemers and robbers. The codefendants robbed and killed Applicant's cousin around 1991 or 1992. Applicant went to the codefendants' homes after his cousin went missing. The codefendants targeted Applicant. When Eddie Palmer was killed, the codefendants used this as an opportunity to hurt Applicant by accusing him of killing the victim. Applicant is innocent. Alternately, this is a case of self-defense or manslaughter. Applicant wanted to testify at trial but was struggling mentally and emotionally.
8. The pathologist testified the victim died of a distant gunshot wound to the chest with internal hemorrhaging. Applicant believes the victim was harmed when another person attempted to perform CPR.

On December 17, 2021, Applicant filed a second Motion to Amend alleging:

1. Prosecutorial misconduct: the prosecutor allowed Applicant to be prosecuted for murder even though she agreed that evidence existed to support self-defense, manslaughter, or mutual combat.

2. Wrongful conviction: Applicant was indicted for killing Eddie Palmer, but the prosecutor amended his name to add his middle name. The Grand Jury did not indict Applicant for killing Eddie Phantom Palmer.

On April 24, 2021, Applicant filed a third Motion to Amend alleging the following grounds of prosecutorial misconduct:²

1. The prosecutor knew Applicant did not murder the victim. The prosecutor spoke with the judge about evidence she presented that showed self-defense and not murder. Tr. 453. The case was “self-defense of another and that someone else could’ve shot the victim.” Tr. 447-61. A variance existed when the evidence established facts materially different from those alleged in the indictment.
2. The judge heard testimony indicating someone performed CPR on the victim, which could have caused harm and death of the victim. The judge and the prosecutor overlooked this evidence.
3. The prosecutor improperly amended the indictment. Tr. 443-44, 553-54.
4. The prosecutor allowed Cetric Myers and Eric Coaxum to testify without standing before the jury to see if they were related in any way to any of them. Tr. 17-22.
5. The prosecutor and trial counsel are related by blood and are close friends.
6. The prosecutor caught a juror talking to the victim’s family, but no action was taken to question the juror or remove the juror. Tr. 121-89; 11-14.
7. Numerous jurors were police officers or related to police officers. Many jurors were excused because they couldn’t be fair to a black man. The prosecutor and court took no appropriate action to ensure all jurors were asked if they could be fair to a black man. Tr. 11-38.

² In addition to the amendments, Applicant filed a motion to appoint counsel on July 19, 2021; a motion for default on August 30, 2021; a Motion to Dismiss the Case due to State or Attorney General on December 2, 2021; a Motion for Summary Judgment on September 23, 2022; and a Motion for a Deposition on February 10, 2023.

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Attached to this return and incorporated herein are the Charleston County Clerk of Court records of the underlying conviction, Applicant's records from the Department of Corrections, and records of Applicant's 2017 federal habeas corpus proceeding. Respondent reserves the right to amend this return upon receipt of any relevant materials.

MOTION TO DISMISS

Respondent moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, asserting no genuine issues of material fact necessitated an evidentiary hearing. Because no questions of law or fact necessitated a hearing, Respondent requested this Court NOT appoint counsel and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 ("If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will ensure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations."); Rule 71.1(d), SCRPC (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing).

This Court has reviewed the application and the records in this case and finds there are no genuine issues of fact to warrant a hearing. Set forth below are this Court's findings:

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Statute of Limitations

This Court finds this application is barred by the statute of limitations. A PCR application “must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur” § 17-27-45(A). 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). Here, Applicant was sentenced in 1995. He filed a direct appeal, and the remittitur was sent May 8, 1997. This PCR application was therefore due on or before May 9, 1998. This application was filed on October 5, 2020—more than twenty-two years *after* the filing period expired. Accordingly, this application shall be summarily dismissed as untimely.³

Successive

This Court finds this application should be summarily dismissed as successive to Applicant’s 2014 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.

³ Applicant’s claim that the trial court lacked subject matter jurisdiction lacks merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

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Successive PCR applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or properly raised in previous applications or actions challenging these convictions. Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Aice, 305 S.C. at 450, 409 S.E.2d at 394. The 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).

Here, Applicant’s allegations could have been raised in the 1997 PCR application. Thus, this application shall be dismissed as successive.⁴

CONCLUSION

WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code, this 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 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, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

⁴ In light of this Court’s finding that this application is successive and untimely, this Court denies Applicant’s motion to appoint counsel, motion for a deposition, motion for default judgment, motion for summary judgment, and motion to dismiss his murder conviction based on Respondent’s default. See Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 (“If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will ensure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations.”); S.C. Code Ann. § 17-27-150(A) (“A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.”); Rule 55(e), SCRCP (“No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . unless the claimant establishes his claim to relief by evidence satisfactory to the Court.”); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory, but discretionary with the circuit court, and the court may extend the time for filing).

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

AND IT IS SO ORDERED this 31 day of July, 2025.


JENNIFER B. MCCOY
Chief Administrative Judge – Common Pleas
Ninth Judicial Circuit

Charleston, South Carolina

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