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JAN 10 2014

S.C. SUPREME COURT

Certificate of Service By Mail

The undersigned hereby certifies that he mailed the foregoing Conditional Order of Dismissal, and Objection to summary dismissals to Mr. Daniel E. Shearouse; Clerk of Court, The Supreme Court Of South Carolina, P.O. Box 11330 Columbia, South Carolina This sixth day of January 2014. By depositing same in the U.S. mail at McCormick mail-room.

Signed Steven Collins

Sworn To and Subscribed Before me this 7th day of January 2014. Stephanie Marshall
Notary Public for South Carolina
My Commission Expires May 12, 2021

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
 2013-CP-23-2300

2013 AUG 21 PM 9:50
 FILED-CLERK OF COURT
 GREENVILLE CO. CL.
 PAUL S. WICKER

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2006 term of the Greenville County Grand Jury for armed robbery (2006-GS-23-1381, count 1) and possession of a weapon during commission of a violent crime (2006-GS-23-1381, count 2). He was represented by Kenneth C. Gibson, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 13, 2006, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of life imprisonment without parole for armed robbery and five (5) years for the weapons charge.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the

form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Collins, Op. No. 2009-UP-479 (S.C. Ct. App. filed October 14, 2009).

The Applicant filed a PCR application on December 10, 2009 (2009-CP-23-10469). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failure to conduct a proper investigation.
2. Prosecutorial misconduct:
 - a. "Prosecutor lied."
3. Violation of due process:
 - a. "Suggestive photos were used."

An evidentiary hearing was convened on May 12, 2011 at the Greenville County Courthouse. Caroline Horlbeck, Esquire represented the Applicant. The Honorable G. Edward Welmaker denied and dismissed the PCR application by order dated July 8, 2011.

The Applicant filed a notice of appeal. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson² petition. The appeal is still pending in the South Carolina Supreme Court.

II.

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

1. Ineffective assistance of counsel:
 - a. "[R]eceived ineffective assistance of counsel pursuant to Lafler v. Cooper by rejection of plea offer and receiving LWOP."
2. Ineffective assistance of PCR counsel.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

III.

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 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. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on September 13, 2006 and the South Carolina Court of Appeals dismissed the appeal on October 14, 2009. The Applicant was therefore required to file 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.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the 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 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, 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 the previous application.” Id. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

The Applicant’s contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not

extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under § 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

VI.

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 (20) 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 for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8th day of Aug., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

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
2013-CP-23-2300

FINAL ORDER OF DISMISSAL

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 DEC 9 PM 2 44

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 2013. The Respondent made its return on August 5, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed August 21, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 13, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Objection to the Conditional Order of Dismissal" and filed September 23, 2013, the Applicant argues his PCR application is not untimely or successive because he did not learn of Lafler v. Cooper, 132 S. Ct 1376 until November 2012.

1
9/14

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on September 13, 2006 and the South Carolina Court of Appeals dismissed the appeal on October 14, 2009. As this action was filed on April 24, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on May 12, 2011. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court finds the Applicant has not met his burden of proving he is entitled to a merits hearing on his allegations. While the Applicant contends he has a meritorious argument that Lafler applies in this case and – in support of this – has attached several pages of his PCR hearing transcript to his “Objection to the Conditional Order of Dismissal.” This Court has examined those pages and does not believe Lafler mandates an evidentiary hearing in this case.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 3RD day of Dec., 2013.

D. Garrison Hill

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

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, SC
PAUL W. HARRIS
2013 SEP 23 3:26 PM
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 allèges, the South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin 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

A handwritten signature in cursive script that reads "Steven Collins". The signature is written in dark ink and is positioned above a solid horizontal line.

Steven Collins,

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
Steven Collins

Mr. Steven Collins # 141257 F-3-A-257
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina
29899

The Supreme Court of South Carolina
Mr. Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, South Carolina

29211