

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ryan P. Deleston, #307106,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-10-01990

CONDITIONAL ORDER OF DISMISSAL

FILED
2026 APR 29 10:23
JULIE J. APOSTOLIS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Ryan P. Deleston (“Applicant”) on April 28, 2020. The State made its return and moved to summarily dismiss the action, asserting the action is successive and has failed to comply with the statute of limitations. After consideration, this Court **GRANTS** Respondent’s motion.¹

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 October 2012, the Charleston County Grand Jury indicted Applicant for murder (2012-GS-10-06361), attempted armed robbery (2012-GS-10-06362), and possession of a firearm during the commission of a violent crime (2012-GS-10-06364). Applicant was subsequently indicted in December 2012 for possession of a handgun with an obliterated serial number (2012-GS-10-06363). Ninth Circuit Chief Public Defender Ashley Pennington and Assistant Public Defender John J. Kozelski represented Applicant. Solicitor Scarlett A. Wilson and Deputy Solicitor Bruce DuRant prosecuted the case.

¹ Respondent’s return was due to be filed within 90 days of service. See Rule 12(a), SCRPC (“[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 required in this matter, and in light of no demonstrable prejudice to Applicant, this Court accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); 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 circuit court may extend the time for filing).



On October 7, 2013, Applicant proceeded to trial before the Honorable Kristi Lea Harrington. The jury found Applicant guilty as indicted. On October 11, 2013, Judge Harrington sentenced Applicant to life imprisonment for murder, twenty years for attempted armed robbery, and five years for possession of a handgun with an obliterated serial number, with those sentences to be served concurrently. Judge Harrington did not impose a sentence for possession of a firearm during the commission of a violent crime pursuant to S.C. Code Ann. § 16-23-490(A) since Applicant was sentenced to life imprisonment.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek and Appellate Defender Lara M. Caudy of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on February 10, 2016. State v. Ryan P. Deleston, Op. No. 2016-UP-055 (S.C. Ct. App. filed February 10, 2016). Applicant petitioned for rehearing on February 25, 2016. The petition for rehearing was denied by the Court of Appeals on April 21, 2016.

Thereafter, Applicant petitioned for certiorari to the South Carolina Supreme Court, which granted certiorari on December 1, 2016. Subsequently, the Supreme Court dismissed certiorari as improvidently granted. State v. Ryan P. Deleston, 217-MO-013 (filed July 19, 2017). The remittitur was issued on July 19, 2017.

First PCR Action: 2017-CP-10-04561

The Applicant subsequently filed an application for PCR on September 5, 2017, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective for failing to object to the jury instruction on expressed malice;
 - b. Counsel was ineffective for to object to the trial court's instruction on voluntary intoxication;

failure (b)(2)

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- c. Counsel was ineffective for failing to request a lesser included offense or relay any deals or plea offers for lesser included offenses;
- d. Counsel did not advise Applicant on not taking the witness stand;
- e. Counsel did not cross-examine witnesses;
- f. Counsel did not recall Bryan Rivers.

Respondent filed its return on December 12, 2017. Subsequently, Respondent filed an amended return on May 23, 2018. An evidentiary hearing into the matter was convened on May 24, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Deputy Attorney General Donald J. Zelenka and Assistant Attorney General Kelly Oppenheimer represented the Respondent. On July 25, 2018, the Honorable Roger M. Young, Sr., issued the order of dismissal denying Applicant's application for post-conviction relief.

On May 13, 2019, Katherine Hudgins, Esquire, of the South Carolina Commission on Indigent Defense, filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent made its return on October 1, 2019. The Supreme Court of South Carolina issued its order denying certiorari on December 11, 2019. The Remittitur was issued on December 30, 2019.

Federal Habeas Petition: 0:20-00717-TMC-PJG

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on March 12, 2020. Applicant set forth the following grounds for relief:

- 1. Counsel failed to object to erroneous malice instruction;
- 2. Counsel was ineffective for failure to object;
- 3. Counsel committed error by admitting Defendant guilt during closing argument;
- 4. Trial Court committed error by refusing cross-examination of two witnesses about prior incident.

Subsequently, Applicant filed a motion to stay the proceedings pursuant to 28 U.S.C. § 2251. On April 3, 2020, Respondent filed its response in opposition to motion to stay, arguing



Applicant has failed to identify any pending state court proceeding. On April 27, 2020, Applicant filed a motion to amend federal habeas petition. On May 12, 2020, Respondent filed its response to motion to amend petition. On June 23, 2020, the Honorable Paige J. Gossett issued an order denying both Applicant's motion to stay proceedings. Respondent filed its return and motion for summary judgment on July 1, 2020. On July 22, 2020, Applicant filed his response in opposition to motion for summary judgment. On August 25, 2020, Judge Gossett granted Applicant's motion to amend federal habeas petition. Respondent filed its return to the amended petition and motion for summary judgment on September 22, 2020. On November 16, 2020, the Honorable Paige J. Gossett issued the report and recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. Deleston v. Nelsen, 0:20-717-TMC-PJG. Applicant filed his objection to the Report and Recommendation on December 10, 2020.

On February 1, 2021, the Honorable Timothy M. Cain, United States District Judge adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition. Deleston v. Nelsen, 0:20-717-TMC-PJG.

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. "Third party guilt argued improperly;"
 - b. "Counsel failed to challenge trial court hands of one hands of all charge;"
 - c. "Trial counsel admission of guilt during closing argument."

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, Applicant's Federal Habeas Corpus records, and the current application.



FINDINGS OF FACT & CONCLUSIONS OF LAW

Respondent moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, arguing 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), SCRCP (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing). This Court has reviewed the application and 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:

Statute of Limitations

This Court finds this application shall 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 found guilty as indicted on October 11, 2013. Remittitur from the direct appeal was issued on July 19, 2017. This application was filed on April 28, 2020, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successiveness

This Court finds the application shall 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 allegation in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and this Court shall summarily dismiss the application as successive to Applicant’s previous PCR application.

CONCLUSION

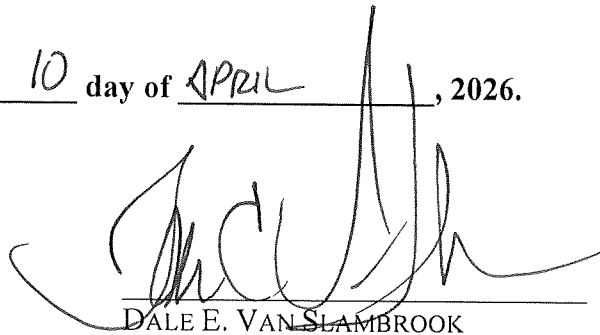
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order 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
Kylee Kanealey, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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 this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 10 day of APRIL, 2026.



DALE E. VAN SLAMBROOK
Chief Administrative Judge – Common Pleas
Ninth Judicial Circuit

Marcus C., South Carolina





ALAN WILSON
ATTORNEY GENERAL

April 27, 2026

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: Ryan P. Deleston, #307106 v. State of South Carolina
Case No. 2020-CP-10-01990

Dear Ms. Armstrong:

Enclosed please find the original Conditional Order of Dismissal signed by The Honorable Dale E. Van Slambrook, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Kylee Kanealey
Assistant Attorney General

KK/vh
Enclosure

cc: Ryan P. Deleston, #307106