

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

Abdullah Holmes, #345105,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2012-CP-18-2026

AMENDED 
CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed August 24, 2012. In its return, the Respondent requested the application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Dorchester County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and prior post-conviction relief records. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree (Victim Between 11 and 14) (2009-GS-18-1773). Applicant was represented by Mary LeMatty, Esquire. On March 8, 2011, the Applicant appeared before the Honorable Diane S. Goodstein where he pled guilty to Assault and Battery of a High and Aggravated Nature and was sentenced to ten years imprisonment.

A timely Notice of Appeal was filed. Applicant filed an additional letter to the South Carolina Court of Appeals which the Court construed as a Petition for Rehearing. By written order filed June 24, 2011, the appeal was dismissed by written order of the Court filed June 24, 2011. The

Remittitur was sent on August 17, 2011.

Applicant filed an application for post-conviction relief on August 10, 2011 (C.A. No. 2011-CP-18-1565). In his application, Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel.
 - a. "Counsel misinformed and misled Applicant about issues of the burden of proof."
 - b. "Counsel failed to disclose to the court of the solicitor's role in this case which did not comply with the standards of justice when the solicitor and Applicant's counsel made an agreement to suppress the solicitor's wrong doing of not first notifying Applicant's counsel or the courts of the obtaining of Applicant's DNA."
 - c. "Counsel failed to disclose to the courts about information of missing documents which is of concern of Applicant's DNA."
 - d. "Counsel failed to investigate the matter of a subpoena or any mandatory requirement of Applicant's DNA."
 - e. "Counsel misinformed, misled and failed to disclose to the courts about violations to Applicant's Amendment Rights."

The State made its Return on December 21, 2011. An evidentiary hearing was convened on May 24, 2012 at which Applicant was present and represented by counsel. In a written order dated June 4, 2012, and filed June 7, 2012, the Honorable DeAndrea G. Benjamin dismissed the application with prejudice. A Notice of Appeal was not filed.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Violation of subject matter jurisdiction and legal malpractice."
 - a. "Violation of Federal and State Constitutions against unreasonable searches and seizures due to legal malpractice."
2. Ineffective assistance of counsel.
 - a. "Pre-trial counsel disregarded this matter."

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 his 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. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

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 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. 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 March 8, 2011. The Court of Appeals' Order was filed on June 24, 2011. This Application was filed on August 24, 2012, which was more than a year after the statutory filing period had expired.

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) (1985) 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." 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 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, factual or legal, with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 25TH day of April, 2013.



EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina.