

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Terrell Howard,)
S.C.D.C. No. 283888,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-23-2870

CONDITIONAL ORDER OF DISMISSAL

2013 SEP 26 A 11: 26

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WIGKINS/SMER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 22, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the March 2006 term of the Greenville County Grand Jury for two counts of armed robbery (2006-GS-23-2532, -2542) and possession of a weapon during the commission of a violent crime (2006-GS-23-2543) and at the May 2006 term for attempted armed robbery (2006-GS-23-4242) and armed robbery (2006-GS-23-4243). C. Timothy Sullivan, Esquire represented the Applicant.

On October 9, 2006, the Applicant pled guilty. The Honorable Steven H. John sentenced the Applicant to concurrent terms of eighteen years for each count of armed robbery, eighteen years for attempted armed robbery, and five years for the weapons charge. The Applicant did

not appeal.

The Applicant filed a PCR application on January 10, 2007 (2007-CP-23-0199). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Subject matter jurisdiction.
3. Violation of due process

An evidentiary hearing was convened on April 18, 2007 at the Greenville County Courthouse. Caroline Horlbeck, Esquire represented the Applicant. The Honorable Edward W. Miller denied and dismissed the PCR application by order filed May 8, 2007.

The Applicant filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson¹ petition. The South Carolina Court of Appeals denied the petition for writ of certiorari on February 2, 2009.

II.

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

1. Subject matter jurisdiction:
 - a. "Void judgment."
2. Ineffective assistance of counsel:
 - a. "Involuntary guilty plea."
3. Unreasonable searches and seizures:
 - a. "Officer conduct violated clearly established constitutional right."

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.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

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 Applicant pled guilty to the offenses he challenges in this application on October 9, 2006. The Applicant was therefore required to file his application before October 9, 2007. This application was filed on May 22, 2013, which was more than five (5) years and seven (7) months 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.

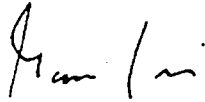
Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new 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.

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 25th day of Sept., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2302870

2013 SEP 26 AM 11:26

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENSIMER

Terrell T Howard vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 26th day of September, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 26th day of September, 2013, and a copy mailed first class this 26th day of september, 2013. to attorneys of record or to parties (when appearing pro se) as follows:

Terrell T Howard Lee Correctional Institute 990
Wisacky Hwy Bishopville, SC 29010

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court