

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS )  
FIRST JUDICIAL CIRCUIT )

2010-CP-38-0888

Jerome Long, #151047, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

CONDITIONAL ORDER OF DISMISSAL

2010 DEC 11 PM 12:31  
ED FROM DISTRICT CLERK  
CLERK OF COURT  
ORANGEBURG COUNTY, SC


This matter comes before this Court by way of an application for post-conviction relief filed May 10, 2010. In its return, the Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted for Murder (94-GS-38-1354). Applicant was represented by Richard Gustafson and Angela Garrick, Esquires. Applicant proceeded to trial and was found guilty. On February 9, 1995, Applicant was sentenced by the Honorable Victor Pyle to life imprisonment.

An appeal was made. The South Carolina Supreme Court affirmed the conviction on January 13, 1997. State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997).

While his appeal was pending, Applicant filed an application for post-conviction relief (PCR) on December 8, 1995 (C.A. No. 95-CP-38-0833). The application was dismissed without prejudice



ATTEST: TRUE COPY  
*Wingie B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

by order of the Honorable Charles W. Whetstone, Jr., dated September 3, 1996.

Applicant next filed a PCR application on February 5, 1997 (C.A. No. 97-CP-38-0106). In this application, Applicant alleged the following grounds for relief:

1. "Ineffective assistance of counsel."
2. "Fifth Amendment Violation."
3. "14<sup>th</sup> Amendment violation procedural due process and substantive due process."

The State made its Return on May 28, 1997. An evidentiary hearing was convened on August 5, 1998, at which Applicant was present and represented by counsel. The application was dismissed with prejudice by written order of the Honorable Costa Pleicones dated March 22, 2000. Applicant appealed, and his petition for writ of certiorari was denied by order of the South Carolina Supreme Court on October 25, 2001. The remittitur was sent on November 13, 2001.

Applicant subsequently filed a PCR application on November 26, 2001 (C.A. No. 01-CP-38-1434). Applicant alleged:

1. "After-discovered evidence – Ineffective assistance."
2. "After-discovered evidence –Brady violation."
3. "After-discovered evidence – Prosecutorial Misconduct."

The State made its Return and Motion to Dismiss on February 26, 2002. The application was dismissed as successive and barred by the statute of limitations in a written order of the Honorable Diane S. Goodstein dated August 11, 2002. Applicant did not appeal.

A fourth PCR application was filed on March 15, 2003 (C.A. No. 03-CP-38-0325). In this application, Applicant asserted:

1. "Ineffective assistance."
2. "Brady violation."
3. "Prosecutorial Misconduct."

The State's Return and Motion to Dismiss was made on July 9, 2003. An evidentiary hearing was convened on January 13, 2004, at which Applicant was present and represented by counsel. The Honorable Diane S. Goodstein dismissed the application as successive and barred by the statute of limitations and found Applicant's subject matter jurisdiction claim to be without merit in an order dated March 22, 2004. Applicant appealed. A Johnson petition for writ of certiorari was submitted on Applicant's behalf, and Applicant made a *pro se* filing. The petition was denied by order dated February 15, 2006. The remittitur followed on March 3, 2006.

Applicant next filed a "Petition for Writ of Habeas Corpus" on October 27, 2005 (C.A. No. 2005-CP-38-1182). Applicant asserted jurisdictional claims. After receiving a clocked copy on June 15, 2007, the State made a Return and Motion to Dismiss on November 14, 2007. On August 5, 2008, an evidentiary hearing was convened. Applicant was present at hearing and represented by counsel. The petition was denied by written order of the Honorable Perry M. Buckner dated August 15, 2008. Applicant appealed, and the petition for writ of certiorari was dismissed by the South Carolina Supreme Court on December 2, 2008. The remittitur followed on December 18, 2008.

On February 24, 2006, Applicant filed a Petition Under 28 USC §2254 for Writ of Habeas Corpus by a Person in State Custody (C.A. No. 6:06-449-HHF-WMC). Applicant asserted:

1. "The court/attorney general is inordinately delaying Petitioner relief on his state habeas corpus petition. Under S.C. Laws 17-17-10-30 entitles a Petitioner to a [hearing] on a habeas

corpus petition within his state writ habeas corpus on October 27, 2005, as of February 6, 2006 the Petitioner has not had a hearing on his subject matter jurisdiction claim contained in his habeas petition.”

The State made its Return and Motion for Summary Judgment on May 17, 2006. Summary judgment in favor of the Respondents was granted by order of the Honorable Henry F. Floyd dated September 28, 2006. Applicant appealed to the United States Court of Appeals for the Fourth Circuit. The appeal was dismissed in an unpublished order on June 27, 2007.

Applicant next filed a PCR application on January 21, 2009 (C.A. No. 09-CP-38-0220). In this application, Applicant alleged the following grounds for relief:

1. “Miscarriage of justice, *Aice v. State* 409 S.E.2d 392.”
2. “Actually innocent of murder and self defense and the law of habitation.”
3. “Constitution violation 14<sup>th</sup> Amendment.”
4. “Constitution violation 6<sup>th</sup> amendment and 14<sup>th</sup>.”

Applicant’s application said “see attachment memorandum of law,” but no additional memorandum was attached.

The State made its Return and Motion for Summary Judgment on June 24, 2009. Additional documents were filed by Applicant on July 9, 2009, captioned “New Petition for Writ of Mandamus.”<sup>1</sup> In his Petition, Applicant alleges a ministerial duty to:

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<sup>1</sup> Though labeled as a petition for writ of mandamus, this document was interpreted as an amendment to Applicant’s PCR application. The relief requested appears to be a new trial and the grounds are not consistent with a petition for writ of mandamus. The circuit court has the discretion to construe a pleading in the appropriate manner and informal format or improper titling of a petition should not be basis for dismissal. See *Gibson v. State*, 329 S.C. at 41, 495 S.E.2d at 428 (habeas corpus petition may be construed as a PCR application); *Hunter v. State*, 316 S.C. 105, 447 S.E.2d 203 (1994),

1. "The respondent's must pursue a conviction on all element charged."
2. "Defendant has a constitutional right under the Fourteenth Amendment to be convicted beyond a reasonable doubt of all element of a crime charged."
3. "The petitioner is entitled to writ of mandamus under the miscarriage of justice standard."
4. Incorrect jury instructions were given at trial.
5. Defendant convicted despite a lack of evidence on an essential element of the crime.
  - a. Defendant's "'presumption of innocence' was never removed by the State's proof of every element necessary to convict him of murder."
6. "Applicant was denied due process of law, effective assistance of counsel, and pleads the defense of actual factual and legal inno[cence]."

The State filed an Amended Return and Motion to Dismiss on July 30, 2009. An evidentiary hearing was convened on March 1, 2010, at which Applicant was present and represented by counsel. In a written order dated September 16, 2010 and filed October 1, 2010, the Honorable Diane S. Goodstein denied the petition. Applicant appealed, and the petition for writ of certiorari was dismissed by the South Carolina Supreme Court on December 1, 2010. The remittitur followed on

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*abrogated on other grounds by* Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Al-Shabazz v. State, 338 S.C. 354, 380-381, 527 S.E.2d 742, 756 (2000).

December 17, 2010.

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

1. "6<sup>th</sup> and 14<sup>th</sup> Amendment right to effective assistance of appellate counsel."
  - a. "Failure to raise Applicant's jury instruct on inference of malice from the use of a deadly weapon."

#### 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 offenses he challenges in this Application on February 9, 1995, and his appeal was decided in 1997. This Application was filed on May 10, 2010, which was over thirteen (13) 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. 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.

Additionally, this Court finds this application is barred under the doctrine of *laches*. The Applicant has filed this application over thirteen (13) years after he was convicted. The doctrine of *laches* bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, the Court intends to summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.


Further, this Court finds this application is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court intends to summarily dismiss these claims as barred by *res judicata*.

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 Orangeburg 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 5<sup>TH</sup> day of December, 2012.



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

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

Jerome Long, 151047,  
 Plaintiff )

v. )

State Of South Carolina  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2010-CP-38-00888

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

2010 DEC 11 PM 10:31

Plaintiff's Attorney: Jerome Long, Bar No. Address: PCI 430 Oaklawn Road Pelzer, SC 29669 phone: fax: e-mail: other:	Defendant's Attorney: Megan E. Harrigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type

- Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan E. Harrigan  
Signature of Attorney for  Plaintiff /  Defendant

November 30, 2012  
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT:  
 EXEMPT:  Rule to Show Cause in Child or Spousal Support  
 (check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter:  
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_

Date Filed:

ATTEST: TRUE COPY

- MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_

Wynne B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC