

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Mario Ramos Hinojos, Jr., )  
S.C.D.C. No. 301870, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
2012-CP-23-7208

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKERSTEF  
2013 MAY 14 PM 3:06

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. 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 April 2003 term of the Greenville County Grand Jury for two (2) counts of murder (2003-GS-23-2931, -2944) and one (1) count of assault and battery with intent to kill (ABIK) (2003-GS-23-2977). He was represented by Thomas J. Quinn, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 12, 2004, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of life imprisonment for each count of murder and twenty (20) years for ABIK.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected

the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Hinojos, Op. No. 2007-UP-176 (S.C. Ct. App. filed April 17, 2007).

The Applicant filed a PCR application on April 15, 2011 (2011-CP-23-2579). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
  - a. Failed to conduct proper pre-trial investigation.
  - b. Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.
  - c. Failed to object to malice charge.
  - d. Attempted to persuade the Applicant to lie on the stand.
2. Illegal search and seizure:
  - a. Lack of probable cause.
3. Ineffective assistance of appellate counsel:
  - a. Failed to explain PCR.

The Respondent submitted a return and motion to dismiss. The Honorable Robin B. Stilwell issued a conditional order of dismissal filed August 9, 2011 in which the Applicant was given twenty days to demonstrate why the PCR application should not be dismissed based on the expiration of the statute of limitations. Though the Applicant filed a response, Judge Stilwell issued a final order of dismissal filed October 21, 2011. The Applicant did not file an appeal.

## 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.
2. Prosecutorial misconduct.
3. Errant jury instructions.
4. Subject matter jurisdiction.
5. Miscarriage of justice.
6. First PCR judge erred.

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

In a document captioned "Motion to Amend Application for Post-Conviction Relief" filed February 7, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
  - a. Failed to move to quash indictment.
  - b. Failed to move for a mental and psychiatric evaluation/competency hearing.
  - c. Refused to allow the Applicant to assist in his own defense by refusing to allow access to his discovery materials.
  - d. Failed to object to prosecutor's closing argument.
2. Prosecutorial misconduct:
  - a. The prosecutor made inflammatory and prejudicial remarks in closing argument.
  - b. Withheld impeaching and exculpatory evidence material to the Applicant's guilt or innocence.
3. Subject matter jurisdiction:
  - a. Indictments were secured with evidence that was fraudulent.
4. Miscarriage of justice:
  - a. The Applicant claims actual innocence.
5. First PCR judge erred:
  - a. Failed to appoint counsel.
  - b. Failed to make specific findings of fact.

### 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 Applicant was convicted of the offenses he challenges in this application on May 12, 2004 and the South Carolina Court of Appeals dismissed his appeal on April 17, 2007. The Applicant was therefore required to file his application before April 17, 2008. This application was filed on

November 14, 2012, which was more than four years and six 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. See 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.

This Court finds the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct. As such the issue must be dismissed. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

This Court finds the issue of a purported lack of subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VII.

This Court finds issues related to error by the trial judge or first PCR judge should have

been raised on appeal. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial** or **on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). These issues must be dismissed.

VIII.

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 7<sup>th</sup> day of May, 2013.



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D. Garrison Hill  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.

STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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MARIO RAMOS HINOJOS, JR., 301870 )  
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vs )  
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Respondent. )  
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IN THE COURT OF COMMON PLEAS

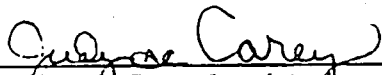
2012-CP-23-7208

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

**Brian P. Johnson, Esquire**  
**522 North Church Street**  
**Greenville SC 29601**

DATED this 11th day of September, 2013.

  
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Judy A. Carey, Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211