

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

FINAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2013 DEC 9 PM 2 42

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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 on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated May 7, 2013 and filed May 14, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

The Applicant filed a motion for default. This Court ordered a hearing set on this motion and for counsel to be appointed to represent the Applicant. A hearing was held on August 30, 2013 before the Honorable Robin B. Stilwell. The Applicant was present and represented by Brian P. Johnson, Esquire. Judge Stilwell denied the motion for default by order filed August 30, 2013. Attached to this Final Order and incorporated herein by reference is a Certificate of

Service dated September 11, 2013, serving the Conditional Order of Dismissal upon the Applicant's attorney. This Court notes the Applicant's attorney has failed to submit a response to the Conditional Order of Dismissal. Out of an abundance of caution, however, this Court will address the pro se filings submitted prior to counsel's appointment.

In a document captioned "Motion to Amend" and filed May 17, 2013, the Applicant argues his trial counsel "failed to request the charge on murder v. manslaughter required by State v. King, 158 S.C. 251, 155 S.E. 409 (1930)." The Applicant argues trial counsel should have objected to the trial judge's jury charge.

In a document captioned "Reply" and filed May 21, 2013, the Applicant argues his appellate counsel "never advised nor explained to him of his right to PCR." The Applicant argues he has a right to counsel in this case. The Applicant argues that "deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." The Applicant argues he was unable to previously raise the issues in his current PCR application "due to the inability to adequately [sic] research the law." The Applicant argues the grand jury was improperly conducted and the trial judge did not have subject matter jurisdiction in his case. The Applicant argues he is entitled to belated appeal.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on May 12, 2004 and the South Carolina Court of Appeals dismissed the appeal on April 17, 2007. As this action was

filed on November 14, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980); see also Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court notes that – as addressed in the final order of dismissal from the Applicant's first PCR application – appellate counsel is not required to advise a defendant of post-conviction remedies. See Sutton v. State, 361 S.C. 644, 606 S.E.2d 779 (2004) overruled on other grounds by Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005).

This Court finds the Applicant's claim that the trial court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds the indictments for murder (2003-GS-23-2931, -2944) and assault and battery with intent to kill (2003-GS-23-2977) were true-billed and clearly adequate to provide notice of the charges the Applicant was facing. This Court finds the Applicant has failed to present any credible evidence that the grand jury proceedings were improper or that the trial judge did not have subject matter jurisdiction.

This Court finds the Applicant is not entitled to an appeal. The Applicant had an appeal from his trial. The Applicant – who represented himself on his first PCR application – failed to file an appeal from the order of dismissal in that case. This Court notes the final paragraph of that order informed the Applicant of the appeal deadline and procedure. This Court finds the

Applicant was aware of his appellate rights and chose not to pursue them.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 3rd day of Dec., 2013.

D. Garrison Hill

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.