

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John Circuit Court Judge

Yortasha McCullough White # 313878
v

State of South Carolina

Petition for Writ of Certiorari

RECEIVED

MAY 12 2014

S.C. SUPREME COURT

313878

Yortasha McCullough White
CECCI WHB
4450 Broad River Road
Columbia, SC 29210

(3) Copies
Atty. Gen. Ms. Carole
SC Supreme Court
Melanie H. Ward (Clerk of Court)

RECEIVED

MAY 12 2014

S.C. SUPREME COURT

Designation of Matter

- Ba. P.C.A. Application Exhibit + Brief
- C1. final Order of Dismissal
- D1. Letter from Appellate Defence Director
- A1 Notice of Intent to appeal Brief
- A1 Notice of Intent to appeal motion
- A2 Affidavit of service, Clerk of court
- A1 Affidavit of service to Atty. General.

CCISE# 2011-CP-26-08793

CCISE# 2011-CP-26-8793

State of South Carolina

In the Supreme Court

Appeal from Horry County

Court of Common Pleas

The Honorable:

Vartasha McCullough White 313878

v.s. →

The State of South Carolina - Respondent

JUNE 01 2011 10:11 AM
In the Supreme Court
Appeal from Horry County
Court of Common Pleas

A1 |

Certificate of Service

The (appellant) hereby certify under penalty of perjury, that a true copy of the notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel, by delivering same this 30th Day of ~~April~~ 2014 at the office of the Atty. General P.O. Box 11549, Columbia, SC 29211. The appellant appeals the final order of Dismissal 17-24-12

S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29

Yantasha McWhite 313378
~~6500 1/2 Broad River Road~~
~~Columbia, SC 29210~~

Atty General
P.O. Box 11549
Columbia, SC 29

IN THE SOUTH CAROLINA SUPREME COURT...

VARTASHA McCLILLOUGH site #313878

vs

THE STATE OF SOUTH CAROLINA

NOTICE of Intent
to APPEAL UNDER
S.C.A.C.R. Rule 203
Pursuant to Rule 227
P.C.R. Not#

A21

The Appellant files this Notice of Intent to Appeal,
the final order of Dismissal of her (P.C.R) claim.
P.C.R. denied with prejudice by the Honorable
Steven H. John

A-31

Procedural History

The Applicant was tried in Horry Court
General Session Court

Direct appeal Jury Trial
Denied Date -

P.C.R. file dismissed / Appcaled dismissed, Appellate
Defense Counselor failed to inform the (Appellant)
that P.C.B. Appeal was denied

After discovered the evidence Chief Director
Mr. Robert M. Dudek informed (Appellant) That Ms.
Robinson left the office over 1/2 ago her case
was found among the records, no notice ever sent to
her. Encourage the (Appellant) to

and P.C.B. was filed on October 20, 2011, denied

evidentiary hearing. Did not know
I could've appealed because I never recieved
an evidentiary hearing. Knowledge of belated
appeal was discovered today

A41

STATEMENT OF THE CASE

The (APPELLANT) was in the state of North Carolina when her (child) became missing. The N. C. Police conducted a search and investigation. The N. C. Police Department ruled out foul play. The (Appellate) was granted to leave and return to South Carolina, her home state.

The (Appellant) was charged with this crime once she return to South Carolina without any physical and scientific evidence to show that a crime was committed.

The state was in violation of 18. U.S.C. A 1503, and under Article VI clause 2, to the 6th Amend. U.S. The state convicted the (Appellant) with false evidence, hearsay evidence F.R.C.P 801 (A), (1). The (Applicant) was convicted without any D.N.A findings and absent a body.

Issues Raise for Review

- 1) Whether Trial Judge had subject-matter jurisdiction to impose sentence on the (Appellant) Pursuant to Article III & 17 (ACT. 83) Unconstitutional statute. Whether Trial Judge erred. When he failed to charge the jury on (16-25-90) Criminal D.V. ACT Pursuant to chapter 13 and 21 of TITLE 24 which would grant her parole after serving 1/4 of her time and will qualify her for parole review every year. The conviction of plea of guilty of any household member. (Whether judge erred in)
- 2) When he charge the Jury on child Abuse by Homicide by child Abuse in lieu ~~Unlawful~~ neglect of a child and Infliction of Great Bodily Injury on a child. Absent any physical Evidence DNA and body.
- 3) Motion to Alter the judgement pursuant to F.R.C.P. 59. To throw out the conclusion of the jury. Tainted conviction. Prosecution misconduct. No DISCOVERY EVIDENCE hearsby evidence on Theory of prosecution. was the direct and approximate cause of the (APPELLANT'S) conviction.
- 4) Whether the (APPELLANT) was prejudice by the Trial Judge prosecution and Defense counsel who aided the prosecution in the unlawful conviction.

Statement of fact.

The issue of subject-matter-Jurisdiction:

A court's jurisdiction over subject-matter- Depends on Authority granted to it by constitution and laws of this state, and in fundamental and objection to such jurisdiction. May be made at any time during the action and cannot be waived or conferred by consent. This is to say that The lower court could not and did in violation imposed a sentence under a statute that is unconstitutional. Quoting Hollman, 60 S.E. 19/1908. Holding that an unconstitutional statute is void and not law. Hence, the judge is without jurisdiction to impose it. Nevertheless, Trial Judge cannot sentence the (APPELLANT) in this case of bar, that did not happen in the state of South Carolina. The Alleged crime happen in North Carolina; North Carolina police Dept. and grand jury suited out foul place. The (Appellant) returned back home which is South Carolina. This state arrested the (Appellant) absent any DNA evidence or a body and tried for an untimely death of her daughter. Again, NO body, NO DNA, NO Autopsy, physical evidence of CBC, DNA, NO evidence ect... was offered into evidence. The (Appellant) was convicted on Hearsay evidence in violation of the 14th and 18th U.S.C.A Const. Amendment.

Table of Authorities

A 61

5th Amendment U.S.C.A. / Indicted on fraud

6th Amendment U.S.C.A. / Defect Representation

18th Amendment U.S.C.A. / Illegally Arrested / Venue

14th Amendment U.S.C.A. / Prejudice / Denied Due Process

Quoting Case Laws of Precedent Value

1) Schrup, 513 U.S. 315, 115 S.Ct. 851. Id At 316 115.

S.Ct. 851, citing → Murray v. Carrick, 777 U.S.

478, 496, 106 S.Ct. 2639, 91 LEd 2d 397 (1986) IN

Both cases the SUPREME COURT RULED: LACK OF

evidence. Exculpatory, scientific evidence

critical, physical evidence that was not presented

at trial, nor was any evidence presented on appeal

in this case at bar against the (Appellant) Id. At

F.N. 32 513 U.S. at 324 115 S.Ct. 851

2) State v. Passmore, 363 S.C. 568, 611 S.E. 2d 273,

281 (Court of Appeals 2008) IN - Passmore v. State

The Supreme Court Ruled that Passmore was

entitled to seek relief, because she was unable

to argue this issue on direct appeal. The applicant

in the case at bar cannot be procedural bar

from raising these issues on appeal for the state

using false testimonies (Quoting - Gibson v. State,

3) Giglio v. U.S., 405 U.S. 150, 153 92 S.Ct. 763, 766

(1992) Prosecution deliberate deception of a court

and jurors by the presentation of known FALSE

evidence is in an patible with rudimentary

demands of justice (Quoting - Riddle, 369 S.C. 47

631 S.E. 2d at 75

4) Napue-V-Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 1177 (1959)

The Supreme Court held that, The principle that a state may not knowingly use false evidence to obtain a tainted conviction implicit in any concept of ordered Liberty, does not cease to apply, merely because the false Evidence Testimony of the state. Citing Brady-V-Maryland

5) Hollman, 360 U.S. 19 (1959) Trial Judge cannot impose a sentence under a statute that is unconstitutional. See expert in Hollman. The judge in this case at bar, the issue of venue and subject-matter jurisdiction is the key factor in this case at bar. The appellant did not commit NO crime in South Carolina, yet the state prosecuted her because she resided in SC and was a citizen although (child) was not missing in SC, but became missing in North Carolina.

Meritorious appeal. There are issues that are appealable.

Strickland v. Washington, 104 S.Ct. 2052 (1984) was reviewed by a second judge.

1) Proper standard for attorney performance is that reasonably effective.

2) Counsel's strategy at sentencing hearing was unreasonable.

3) Assuming challenged court conduct counsel was unreasonable, defendant suffered insufficient prejudice "reversed".

Rule 1.3 Rule 407 S.C.A.C.R., which is South Carolina rules of court 2008

A lawyer shall act with reasonable diligence and promptness in representing a client.

Adopted effective September 1, 1990

Amended effective October 1, 2005

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must act with commitment and dedication to the interests of the client and with ZEAL in advocacy upon client's behalf.

In Anonymous member of S.C. Bar 552, S.E. 2nd 10
1. Attorney disciplinary - make reasonable efforts even if
he or she did not know of supervised attorney
inappropriate

2. Zealous and advocacy

Gallman - state 414 se 2d 780

Supreme court finney J granted certiorari and
held that defense counsels failure to object to
comments ineffective assistance of counsel.
Reversed and Remanded.

FOR A POST-CONVICTION RELIEF APPEAL WE NEED THE FOLLOWING:

1. Original trial conviction transcript;
2. Application for post-conviction relief and amended application(s), if any;
3. True-billed indictment(s);
4. Final signed written Order of the judge denying post-conviction;
5. Copy of the Notice of Intent to Appeal with proof of service on opposing counsel, and date of filing with the Court;
6. State's Return and Motion to Dismiss and all attachments and any amended return;
7. Order or letter of Appointment, or Affidavit of Indigency and signed Order of Indigency; and
8. Names and addresses of all court reporters and hearing dates.

FOR A DIRECT APPEAL WE NEED THE FOLLOWING:

1. True-billed indictments, arrest warrants and accompanying affidavits and statements;
2. Copy of the Notice of Intent to Appeal with proof of service and date of filing with the Court;
3. Name and address of Court Reporter(s) (including trials in absentia, pretrial, motions, post-trial, etc.);
4. Copy of any voir dire requests, written motions or requests to charge or memoranda that you made at the time of trial;
5. Copies of any and all written Exhibits introduced at trial and any and all motions filed by the defense or prosecution; and
6. Order or letter of Appointment, or Affidavit of Indigency and signed Order of Indigency.

NOTE: We cannot meaningfully review the transcript to ascertain errors unless we have your requests to charge and requested voir dire questions which were denied. Please send these with the above information.



ALAN WILSON
ATTORNEY GENERAL

December 2, 2011

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Common Pleas Division (PCR)
Post Office Box 677
Conway, South Carolina 29528

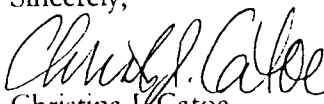
RE: Vartasha McCullough White, # 313878, v. State of South Carolina
2011-CP-26-8793

Dear Mrs. Huggins-Ward:

Enclosed please find, for filing in your office, the State's **Return and Motion to Dismiss**, along with a **Certificate of Service**, in the above-referenced PCR matter.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,


Christina J. Catoe
Assistant Attorney General

Enclosures:
Return and Motion to Dismiss & Certificate of Service

cc: Vartasha McCullough White
Graham Correctional Institution
4450 Broad River Road
Columbia, SC 29210

CLERK OF COURT



Horry County
SOUTH CAROLINA

Committed to Excellence

MELANIE HUGGINS-WARD

CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

FILED
HORRY COUNTY
2011 OCT 26 AM 10:16
MELANIE HUGGINS-WARD
CLERK OF COURT

OCTOBER 26, 2011

ATTY. CHRISTINA CATOE
OFFICE OF ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

RE: VARTASHA McCULLOUGH WHITE # 313878
CASE #: 2011-CP-26-08793

DEAR MS. CATOE:

PLEASE BE ADVISED THAT THE ABOVE REFERENCED INDIVIDUAL HAS MADE APPLICATION FOR POST-CONVICTION RELIEF IN OUR COUNTY.

ENCLOSED YOU WILL FIND A COPY OF THE POST-CONVICTION RELIEF APPLICATION, ALONG WITH TRUE COPIES OF THE WARRANT, VERDICT FORM (IF TRIAL BY JURY), SENTENCE SHEET, AND THE INDICTMENT ON THE ABOVE REFERENCED INDIVIDUAL.

IF WE MAY BE OF FURTHER ASSISTANCE, PLEASE ADVISE.

SINCERELY,

Melanie Huggins-Ward

MELANIE HUGGINS-WARD
CLERK OF COURT

MHW/fhn
ENCLOSURES

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Vartasha McCullough White, # 313878,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-8793

FINAL ORDER OF DISMISSAL

12 JUL 24 PM 1:59
CLERK COURT

This matter comes before the Court by way of an Application for post-conviction relief filed October 20, 2011, by Vartasha (a.k.a. "Vertasha") McCullough White. Respondent made a Return and Motion to Dismiss on December 2, 2011, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal filed December 15, 2011, provisionally denying and dismissing the action, while giving the Applicant twenty days from the date of service of the Order in which to show why the conditional dismissal should not become final. The Applicant was personally served with a copy of the Conditional Order of Dismissal on January 4, 2012, at Graham Correctional Institution.

The Applicant has not submitted a response following the Conditional Order of Dismissal. Therefore, the conditional dismissal must become final.

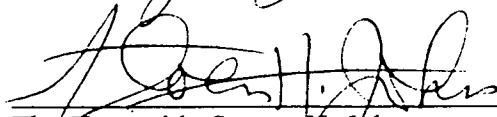
IT IS THEREFORE ORDERED that, for the reasons set forth above and in the Court's Conditional Order of Dismissal, the Application for PCR is hereby **DENIED** and **DISMISSED with prejudice**.

This Court hereby directs the Applicant's attention to Rules 203 and 243, South Carolina Appellate Court Rules, for the appropriate procedures to be followed in order to commence an

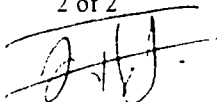
15/2
2/1/12

appeal from this Order. A Notice of Appeal must be served **within thirty (30) days** of the service of this Order to secure appellate review. But see Edith v. State 369 S.C. 408, 632 S.E.2d 844 (2006) (failure to file a response to a conditional order of dismissal will preclude an appeal after final order is issued).

AND, IT IS SO ORDERED this 16~~th~~ day of July, 2012.


The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

Camden, South Carolina



COPIES
MAILED

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
Vartasha McCullough White, # 313878,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-8793

FINAL ORDER OF DISMISSAL

FILED
12 JUL 27 11 59 AM
CLERK OF COURT
WARD

This matter comes before the Court by way of an Application for post-conviction relief filed October 20, 2011, by Vartasha (a.k.a. "Vertasha") McCullough White. Respondent made a Return and Motion to Dismiss on December 2, 2011, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal filed December 15, 2011, provisionally denying and dismissing the action, while giving the Applicant twenty days from the date of service of the Order in which to show why the conditional dismissal should not become final. The Applicant was personally served with a copy of the Conditional Order of Dismissal on January 4, 2012, at Graham Correctional Institution.

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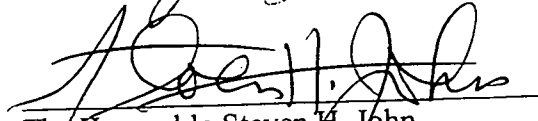
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This Court hereby directs the Applicant's attention to Rules 203 and 243, South Carolina Appellate Court Rules, for the appropriate procedures to be followed in order to commence an



appeal from this Order. A Notice of Appeal must be served **within thirty (30) days** of the service of this Order to secure appellate review. But see Edith v. State 369 S.C. 408, 632 S.E.2d 844 (2006) (failure to file a response to a conditional order of dismissal will preclude an appeal after final order is issued).

AND, IT IS SO ORDERED this 16th day of July, 2012.


The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

Cowley, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Vartasha McCullough White, # 313878,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-8793

CONDITIONAL ORDER OF DISMISSAL
(Successive and Statute of Limitations)

This matter comes before the Court by way of an Application for post-conviction relief filed October 20, 2011, by Vartasha (a.k.a. "Vertasha") McCullough White. Respondent made a Return and Motion to Dismiss on December 2, 2011, requesting that the Application be summarily dismissed. Incorporated herein by reference are the Horry County Clerk of Court records regarding the convictions and the Applicant's prior post-conviction relief file (2007-CP-26-0090).

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Horry County Clerk of Court. The Applicant was indicted at the December 2005 term of the Horry County Grand Jury for homicide by child abuse (2005-GS-26-3822) unlawful neglect of a child (2005-GS-26-4282), and intentional infliction of great bodily injury upon a child (2005-GS-26-4283). The Applicant was represented by Ralph J. Wilson, Esquire, on the charges. The Applicant proceeded to trial on February 6-10, 2006, pursuant to which she was found guilty. The Honorable Edward B. Cottingham sentenced her to twenty years on the homicide by child abuse charge, ten years, concurrent, on the unlawful neglect charge, and five years, concurrent, on the great bodily injury to a child charge. A notice

of appeal was timely filed but the appeal was dismissed on March 30, 2006, and remitted to the circuit court on April 17, 2006.

The Applicant filed her first PCR Application on January 8, 2007 (2007-CP-26-0090), raising the following allegations:

- (1) Ineffective assistance of counsel;
- (2) Lack of evidence; and
- (3) Prejudice.

An evidentiary hearing was held on April 30, 2008, before the Honorable Steven H. John. Judge John issued an order denying relief on May 15, 2008. A timely notice of appeal was filed, and M. Celia Robinson, Esquire, represented the Applicant in her PCR appeal. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari on August 20, 2009. The matter was remitted to the circuit court on September 8, 2009.

Allegations and Relief Sought

In her current Application, Ms. White raises the following allegations:

- (1) Lack of subject matter jurisdiction over the offense;
- (2) Entrapment statute/obstruction of justice;
- (3) False imprisonment – held illegally as a hostage; and
- (4) 5th, 6th, 14th Amendments, U.S.C.A.

The Applicant states she is seeking to be released from judgment, appeal bond until trial is set, fast and speedy trial with 120 days, emergency injunction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court first finds that the Applicant's allegation #1, lack of subject matter jurisdiction over the offense, is without merit as a matter of law. It is clear from the record that the circuit

court judge, sitting in general sessions court in Horry County, did have subject matter jurisdiction to try an indictment true-billed by the Horry County Grand Jury. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (circuit courts obviously have subject matter jurisdiction to try criminal matters). Therefore, this claim is without merit as a matter of law and must be dismissed.

This Court also finds that allegations 2, 3, and 4 must be summarily dismissed because they are procedurally barred. First, they are impermissibly successive to the first Application. The Uniform Post Conviction Procedure Act provides that:

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, 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.

S.C. Code Ann. § 17-27-90 (2003). Successive applications are disfavored and the burden is on Applicant to establish that he could not have raised any new ground raised in a subsequent application in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). The Applicant could have raised these issues in her previous PCR proceeding. Therefore, she cannot raise these issues now in a successive application. See Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra.

In addition, these allegations are barred by the one-year statute of limitations. 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 applies to all applications after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant in this case was sentenced on February 10, 2006, and the remittitur from the direct appeal was sent to the lower court on April 17, 2006. Therefore, Ms. White had until April 17, 2007 to file a timely PCR application. However, this Application was not filed until October 20, 2011. Therefore, the Application is barred by the statute of limitations.

A motion for summary judgment may properly be used to raise a statute of limitations defense. See RWE Nukem Corp. v. ENSR Corp., 73 S.C. 190, 194, 644 S.E.2d 730, 732 (2007). In addition, S.C. Code Ann. § 17-27-70(c) 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 summary dismissal of the Application is appropriate for the reasons set forth above.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to **DISMISS** this Application for post-conviction relief **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 to show why the conditional dismissal should not become final. The Applicant shall file any reasons she

may have with the Horry County Clerk of Court and shall serve the State using the following address:

**Office of the Attorney General
Attn: Christina J. Catoe (PCR)
P.O. Box 11549
Columbia, SC 29211**

AND, IT IS SO ORDERED this ____ day of _____, 2011.

Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Vartasha McCullough White, # 313878,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-8793

RETURN AND MOTION TO DISMISS

Respondent, making its Return and Motion to Dismiss to the Application for post-conviction relief filed October 20, 2011, by Vartasha (a.k.a. "Vertasha") McCullough White, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Horry County Clerk of Court. The Applicant was indicted at the December 2005 term of the Horry County Grand Jury for homicide by child abuse (2005-GS-26-3822) unlawful neglect of a child (2005-GS-26-4282), and intentional infliction of great bodily injury upon a child (2005-GS-26-4283). The Applicant was represented by Ralph J. Wilson, Esquire, on the charges. The Applicant proceeded to trial on February 6-10, 2006, pursuant to which she was found guilty. The Honorable Edward B. Cottingham sentenced her to twenty years on the homicide by child abuse charge, ten years, concurrent, on the unlawful neglect charge, and five years, concurrent, on the great bodily injury to a child charge. A notice of appeal was timely filed but the appeal was dismissed on March 30, 2006, and remitted to the circuit court on April 17, 2006.

The Applicant filed her first PCR Application on January 8, 2007 (2007-CP-26-0090), raising the following allegations:

- (1) Ineffective assistance of counsel;
- (2) Lack of evidence; and
- (3) Prejudice.

An evidentiary hearing was held on April 30, 2008, before the Honorable Steven H. John. Judge John issued an order denying relief on May 15, 2008. A timely notice of appeal was filed, and M. Celia Robinson, Esquire, represented the Applicant in her PCR appeal. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari on August 20, 2009. The matter was remitted to the circuit court on September 8, 2009.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction and the Applicant's prior post-conviction relief file (2007-CP-26-0090). Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. –Current Allegations

In her current Application, Ms. White raises the following allegations:

- (1) Lack of subject matter jurisdiction over the offense;
- (2) Entrapment statute/obstruction of justice;
- (3) False imprisonment – held illegally as a hostage; and
- (4) 5th, 6th, 14th Amendments, U.S.C.A.

The Applicant states she is seeking to be released from judgment, appeal bond until trial is set, fast and speedy trial with 120 days, emergency injunction relief action.

III. – Issue # 1 – Subject Matter Jurisdiction

Allegation #1, lack of subject matter jurisdiction over the offense, is without merit as a matter of law. It is clear from the record that the circuit court judge, sitting in general sessions court in Horry County, did have subject matter jurisdiction to try an indictment true-billed by the Horry County Grand Jury. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005)

(circuit courts obviously have subject matter jurisdiction to try criminal matters). Therefore, this claim is without merit as a matter of law and must be dismissed.

IV. – Issue # 2, # 3, and # 4 are Procedurally Barred

Respondent submits that issues 2, 3, and 4 must be summarily dismissed because they are procedurally barred. First, they are impermissibly successive to the first Application. The Uniform Post Conviction Procedure Act provides that:

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, 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.

S.C. Code Ann. § 17-27-90 (2003). Successive applications are disfavored and the burden is on Applicant to establish that he could not have raised any new ground raised in a subsequent application in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). The Applicant could have raised these issues in her previous PCR proceeding. Therefore, she cannot raise these issues now in a successive application. See Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra.

In addition, these allegations are barred by the one-year statute of limitations. 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 applies to all applications after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant in this case was sentenced on February 10, 2006, and the remittitur from the direct appeal was sent to the lower court on April 17, 2006. Therefore, Ms. White had until April 17, 2007 to file a timely PCR application. However, this Application was not filed until October 20, 2011. Therefore, the Application is barred by the statute of limitations.

A motion for summary judgment may properly be used to raise a statute of limitations defense. See RWE Nukem Corp. v. ENSR Corp., 73 S.C. 190, 194, 644 S.E.2d 730, 732 (2007). In addition, S.C. Code Ann. § 17-27-70(c) 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, Respondent moves for summary dismissal of the Application for the reasons set forth above.

IV.

Each and every allegation, statement, or claim contained within the Application not expressly admitted, qualified, or explained is hereby DENIED.

V.

WHEREFORE, having made its Return and Motion to Dismiss, Respondent requests that the Application be summarily dismissed without a hearing.

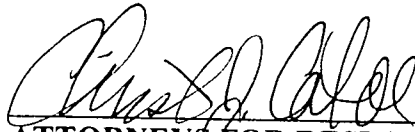
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

December 2, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Vartasha McCullough White, # 313878,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

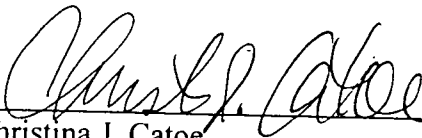
2011-CP-26-8793

CERTIFICATE 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 State's **RETURN AND MOTION TO DISMISS** in the above captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

**Vartasha McCullough White
Graham Correctional Institution
4450 Broad River Road
Columbia, SC 29210**

DATED this 2nd day of December, 2011.



Christina J. Catoe
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA

County of Horry

#313878

Vartasha McElough White
Full name and prison number (if any) of Applicant.

vs.

Henry Mcmasters
Name of Respondent.

State of South Carolina

In the Court of Common Pleas

||

8793

APPLICATION FOR
POST-CONVICTION RELIEF

NOV 20 PM 2:01
CLERK OF COURT
Horry County

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Camille Griffin Graham Correctional Institution, 4450 Broad River Road, Columbia SC 29210
2. Name and location of Court which imposed sentence Horry Courthouse 11301 Second Avenue, Conway SC 29526 / Horry County Courthouse
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 05-6S-26-3822 Homicide by child Abuse 16-3-85(A)(2) 20 years
 - (b) 05-6S-26-4282 Unlawful Neglect of a child 10 years
 - (c) 05-6S-26-4283 Inflicting of great bodily injury upon a child 16-3-95(B) 5 years
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 10, 2004 20 years
 - (b) February 10, 2004 10 years concurrent
 - (c) February 10, 2006 5 years concurrent

5. Check whether a finding of guilt was made

(a) after a plea of guilty NA

(b) after a plea of not guilty YES

(c) after a plea of nolo contendere NA

6. Did you appeal from the judgment of conviction or the imposition of sentence?
YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURTS OF APPEALS

ii. THE COURTS OF COMMON PLEAS

iii. THE SOUTH CAROLINA SUPREME COURT

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. Denied

iii. Denied

(c) the date of each such result:

i. MARCH 30, 2006

ii. 2007

iii. AUGUST 20th 2009

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UNKNOWN

ii. UNKNOWN

iii. UNKNOWN

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) NA

(b) NA

(c) NA

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) LACK OF SUBJECT-MATTER JURISDICTION OVER THE OFFENSE

(b) ENTRAPMENT STATUTE / OBSTRUCTION OF JUSTICE

(c) FALSE IMPRISONMENT, Held ILLEGALLY AS A HOSTAGE
3rd 4th 14th Amendment U.S.C.A.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Alleged CRIME OCCURRED IN NORTH CAROLINA

(b) QUESTION BY POLICE WITHOUT COUNSEL, A.H.Y.S CONSPIRED WITH STATE.

(c) PROSECUTED WITHOUT ANY PHYSICAL, SCIENTIFIC PROOF OF BODY.

INEFFECTIVE ASSISTANCE OF COUNSEL, 6th Amendment U.S.C.A.

14th Amendment U.S.C.A. FALSE IMPRISONMENT.

5th Amendment Denied Discovery, Miscane Violation,

Denied DUE PROCESS OF LAW.

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? YES
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA
 - (d) any other petitions, motions or applications in this or any other Court? YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. SOUTH CAROLINA COURTS OF APPEALS / DIRECT APPEAL
- ii. THE COURTS OF COMMON PLEAS / P.C. RELIEF ACTION
- iii. THE S.C. SUPREM COURT / P.C.R. APPEAL
- iv. NA

(b) the name and location of the Court in which each was filed:

- i. SOUTH CAROLINA COURTS OF APPEALS
- ii. THE COURTS OF COMMON PLEAS
- iii. THE S.C. SUPREM COURT
- iv. NA

(c) the disposition thereof:

- i. Denied
- ii. Denied
- iii. Denied
- iv. NA

(d) the date of each such disposition:

- i. 2006 MARCH 30th 2006
- ii. 2008
- iii. AUGUST 20th 2009
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA - NA - NA

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

(b) the proceedings in which each ground was raised:

- i. NA
- ii. NA
- iii. NA

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) JURISDICTION - DISCOVERED AFTER DENIAL OF P.C.R. APPEAL
- (b) ENTRAPMENT / OBSTRUCTION OF JUSTICE, AFTER DISCOVERY EVIDENCE
- (c) FALSE IMPRISONMENT / AFTER DENIAL OF APPEALS, P.C.R. AFTER DISCOVERY EVID.

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NA
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. RALPH J. WILSON 1315 3RD AVENUE
P.O. BOX 1827, CONWAY S.C. 29528.
- ii. _____
- iii. CELIA ROBINSON, APPELLATE DEFENSE COUNSEL
COLUMBIA, S.C. 29201

(b) the proceedings at which each such attorney represented you:

- i. JURY TRIAL
- ii. POST CONVICTION RELIEF ACTION
- iii. SUPREME COURT

18. State clearly the relief you seek in filing this application.

RELEASED FROM JUDGEMENT, HYPHEN BOND UNTIL TRIAL IS SET,
FAST & SPEEDY TRIAL WITH 100 DAYS. EMERGENCY INJUNCTION RELIEF STATUTE

19. Are you now under sentence from any other court that you have not challenged?

NA - NA

County of Horry

VERIFICATION

11

8993

I, Vartasha McCullagh White

, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Vartasha McCullagh White

SWORN to and subscribed before me this 17th

day of October, 2011.

Peggy Kyle Loh (L.S.)
Notary Public

My Commission Expires: 11/23/14

HORRY COUNTY
11 OCT 20 11 PM 2:01
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Vartasha McCullagh White

, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Vartasha McCullagh White
Applicant

SWORN or affirmed to and subscribed before me this

17th day of October, 2011

Peggy Kyle Loh
Notary Public

My Commission Expires 11/23/14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Vickie Padgett (Server) as his duly authorized agent for the purpose of making service of the signed Final Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF Richland)

On this 9th day of August, 2012, I served the signed Final Order of Dismissal on Inmate Vartasha McCullough White, SCDC Inmate No. 313878, by delivering personally and leaving a copy of the same at Camille Griffin Graham Correctional Institution, Columbia, South Carolina. Deponent is not a party to this action.

s/ Vickie Padgett

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9th day of August, 2012

Judith P. Heath (L.S.)
Notary Public for South Carolina

My Commission Expires: 8-23-21

ADMISSION OF SERVICE

Service of a copy of the signed Final Order of Dismissal is admitted at the S.C. Department of Corrections, Camille Griffin Graham Correctional Institution, Columbia, Richland County, South Carolina, this 9th day of August, 2012.

s/ Vartasha White
Inmate Signature
SCDC No. 313878

EXHIBIT A

1100



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 23, 2011

Vertasha McCullough White, # 313878
Graham Correctional Institution
4450 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Ms. White:

This letter is to inform you that Ms. Celia Robinson is no longer with our office. Please be advised that a check of our records shows that Ms. Robinson's petition for writ of certiorari from the denial of PCR on your behalf was denied on August 20, 2009. Upon review of all of our open files from Ms. Robinson, it appears that you have not been notified of this decision, you need to **include that fact** in your application for a writ of habeas corpus in the United States District Court which is your next avenue of relief from the denial of PCR. I have included an habeas application for you to fill out and file. This application needs to be filed **very quickly** if you are going to assert equitable tolling against the one year statute of limitations for lack of notice from Ms. Robinson.

I hope this is not the situation but if you have not filed for federal habeas you need to do so very quickly. Should you have any questions, please do not hesitate to contact me but **do not let contacting me delay filing this application in any way.**

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

enclosure

are

Exhibit A

Ms. Vertasha McCullough White, # 313878

Page 2

September 8, 2008

I receive a tremendous amount of mail and I may not be able to respond to all letters. However, you are free to telephone me collect. An SCDC Telephone Privilege Request has already been submitted for the following number: (803) 734-1330. This is the preferred method of us communicating. Regardless, rest assured if you write me a letter about your case, I will read it and carefully consider it as I decide which issue or issues to submit to the appellate court. Please note that the decision about which issues to submit is mine. Only if I submit a "no merits" or Johnson petition, stating that I could not find any good issues, will the court let you submit your own legal arguments.

In addition, we are not able to visit our clients personally but feel free to call collect.

Be assured that I will try my best to find reversible error. I will submit the best petition I possibly can to the Supreme Court.

Finally, if you are transferred to another facility or released, you must write and let me know where you are. The Department of Corrections will not notify us of your new address.

I hope this letter answers some of the questions you may have at this time. Again, please do not hesitate to contact me by letter if you have any questions or I may be of further assistance.

Sincerely,



M. Celia Robinson
Appellate Defender

MCR/lec

Enclosure



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
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Telephone: (803) 734-1330
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 23, 2011

Vertasha McCullough White, # 313878
Graham Correctional Institution
4450 Broad River Road
Columbia, SC 29210

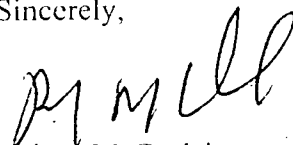
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Sincerely,



Robert M. Dudek
Chief Appellate Defender

RMD:lec

enclosure

are

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Vickie Padgett (Server) as his duly authorized agent for the purpose of making service of process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

AFFIDAVIT OF PERSONAL SERVICE

On this 4th day of January, 2011, I served a copy of the signed Conditional Order of Dismissal in the case of Vartasha M. White v. State of South Carolina, 2011-CP-26-8793, on Inmate Vartasha White, SCDC Inmate # 313878, by delivering personally and leaving a copy of the same at Camille Graham Correctional Institution, Columbia, South Carolina.

Deponent is not a party to this action.

s/ Vickie Padgett
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 4th day of January, 2011,
Jarvis P. Hall (L.S.)

Notary Public for South Carolina

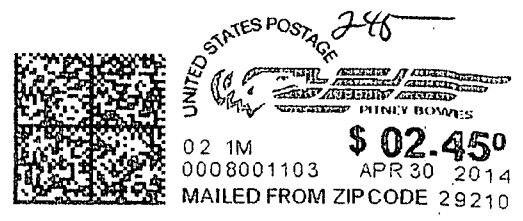
My Commission Expires: 8-23-21

ADMISSION OF SERVICE

Service of a copy of the within signed Conditional Order of Dismissal in the case Vartasha White v. State of South Carolina, 2011-CP-26-313878, is admitted at the S.C. Department of Corrections (Graham Correctional Institution), Columbia, Richland County, South Carolina, this 4th day of January, 2011.

s/ Vartasha White
Inmate Signature
SCDC Inmate # 313878

Tasha McCullough White #313878
GGC-VHB
4450 Broad River Road
Columbia SC 29210



SCDC
APR 30 2014
MAIL ROOM

South Carolina Supreme Court
PO. BOX 11330
Columbia, SC 29211-1

(LEGAL)