

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
John Willis Goldsmith,)
S.C.D.C. No. 281165,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-23-2304

CONDITIONAL ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO SC
CARL N. WALKER, CLERK
2013 SEP 30 AM 10:32

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 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.

A.

The Applicant was indicted at the March 2005 term of the Greenville County Grand Jury for failure to stop for a blue light (2005-GS-23-1877), possession with intent to distribute (PWID) cocaine (2005-GS-23-1921), and trafficking crack cocaine (2005-GS-23-1923). He was represented by Stephen J. Henry, Esquire.

After the State called the case to trial, the Applicant was found guilty of failure to stop for a blue light, possession of cocaine, and PWID crack cocaine. On October 10, 2006, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of two years for



failure to stop for a blue light, five years for possession of cocaine, third offense, and eighteen years for PWID crack cocaine, third offense. The Applicant did not appeal.

B.

The Applicant was indicted at the June 2005 term of the Greenville County Grand Jury for failure to stop for a blue light (2005-GS-23-4346), PWID marijuana (2005-GS-23-4347), PWID crack cocaine within proximity of a school (2005-GS-23-4348), PWID cocaine within proximity of a school (2005-GS-23-4349), trafficking cocaine (2005-GS-23-4350), trafficking crack cocaine (2005-GS-23-4351), and PWID marijuana within proximity of a school (2005-GS-23-4352). He was represented by Stephen J. Henry, Esquire.

On November 8, 2006, the Applicant pled guilty. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of one year for failure to stop for a blue light, eighteen years for PWID marijuana, third offense, ten years for PWID crack cocaine within proximity of a school, ten years for PWID cocaine within proximity of a school, eighteen years for trafficking cocaine, second offense, eighteen years for trafficking crack cocaine, second offense, and ten years for PWID marijuana within proximity of a school. The Applicant did not appeal.

2010-CP-23-10289

The Applicant filed a PCR application on December 21, 2010 (2010-CP-23-10289). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to file a notice of appeal.
2. After-discovered evidence.
3. Subject matter jurisdiction.

A motion hearing was convened on April 3, 2012 at the Greenville County Courthouse.



Rodney W. Richey, Esquire represented the Applicant. By order filed April 13, 2012, the Honorable Edward W. Miller granted the State's partial motion to dismiss – finding all issues except for that of a belated appeal were untimely. Judge Miller also found the Applicant was not entitled to a review of any direct appeal issues from either his October 2006 trial or his November 2006 guilty plea hearing. 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 trial counsel:
 - a. Failed to inform either the trial or plea judge of "the correct amount of time applicant served prior to trial."
2. "Jail time credits claim."

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 several charges on October 10, 2006 and pled guilty to several additional charges on November 8, 2006. This application was filed on April 24, 2013, which was several years after the statutory filing period had expired for both sets of convictions.

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.

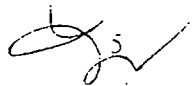
Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from 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 26 day of Sept, 2013.



Letitia H. Verdin
Chief Administrative Judge/General Sessions
Thirteenth Judicial Circuit

Greenville South Carolina.



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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2302304

John W Goldsmith vs. South Carolina State Of

FILED-CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKENSIMER
2013 SEP 30 AM 10:30

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a 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):
SCRPC (Vol. Nonsuit): Rule 43(k), SCRPC (Settled): Other: _____
 Rule 12(b), SCRPC; Rule 41(a),
- ACTION STRICKEN (CHECK REASON):
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRPC; Bankruptcy:
- 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 30th day of September, 2013.

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the 30th day of September, 2013, and a copy mailed first class this 30th day of September, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

John W Goldsmith Tyger River Corr Institute 200
Prison Rd Enoree, SC 29335

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

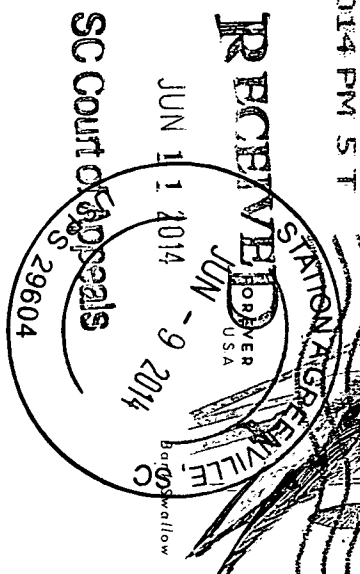
ATTORNEY(S) FOR THE DEFENDANT(S)

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

JW Goldsmith 281165
Tyger River CI UB-B-115
300 Prison Rd
Shore SC 29335

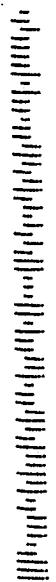
GREENVILLE SC 296

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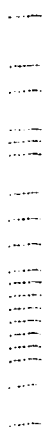
Clerk of Court
P.O. Box 11629
Columbia SC 29211

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