

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4007435

Donald E #237941 Robinson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (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):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
 FILED
 JUN 10 AM 11:32
 W. ACRIE

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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 June 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Donald E #237941 Robinson

Megan E. Harrigan

Donald E #237941 Robinson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Donald E. Robinson, #237941,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-07435

CONDITIONAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 JUN 10 AM 11:31
JANETTE W. MERIDIE
C.C.P. & G.

This matter comes before this Court by way of an application for post-conviction relief filed December 10, 2013.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the March 1996 term of the Richland County Grand Jury for two counts of Assault and Battery of a High and Aggravated Nature (ABHAN) (96-GS-40-1134 and - 11600), and First Degree Burglary (96-GS-40-11390). Applicant was represented on the charges by A. Randolph Hough, Esquire. Applicant proceeded to trial before the Honorable Thomas W. Cooper, Jr. on January 13-17, 1997, where he was found guilty on each charge as indicted. Judge Cooper sentenced Applicant to thirty (30) years imprisonment for Burglary and concurrent terms of ten (10) years on each count of ABHAN.

Applicant filed a timely notice of appeal on January 28, 1997. Assistant Appellate Defender Tara S. Taggart represented Applicant on his appeal. Applicant raised the following grounds for relief on his direct appeal:

1. Whether the trial judge erred in failing to sever appellant's trial from co-defendant's trial until after the damage was irreparable.

2. Whether the trial judge erred in denying appellant's motion for mistrial.
3. Whether the trial judge erred in allowing appellant's alleged oral statement into evidence in violation of Jackson v. Denno.

The State submitted a Final Brief of Respondent on February 1, 1999. The South Court of Appeals affirmed the decision of the trial court. State v. Donald Robinson, Op. No. 2000-UP-146 (S.C. Ct. App. filed Mar. 1, 2000). On June 30, 2000, Ms. Taggart filed a Petition for Writ of Certiorari, on Applicant's behalf, with the South Carolina Supreme Court. Respondent filed a Return to Petition for Writ of Certiorari on June 30, 2000. The South Carolina Supreme Court denied certiorari on October 19, 2000. The remittitur was issued on October 27, 2000.

2000-CP-40-04723

Applicant subsequently filed an application for post-conviction relief on November 9, 2000, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel,
2. Conspiracy, perjury, and subornation of perjury,
3. Misconduct, intentionally using false statement.

Applicant thereafter submitted an Amended Application for Post-Conviction Relief, in which he asserted the following additional grounds for relief:

1. Applicant was denied an opportunity to cross-examine the now unavailable victim's alleged statements offered as evidence by the state in violation of both, the United States and the South Carolina Constitution. The admission of hearsay evidence against a criminal defendant implicates the Sixth Amendment because the defendant is not afforded the opportunity to confront the out-of court declarant;
2. Insufficiency of evidence that the Applicant entered the victim's residence for burglary;
3. Insufficiency of evidence that the Applicant assaulted the victim;
4. Conviction upon denial of the direct verdict motion, insufficiency of the evidence.

The State filed its Return and Motion to Dismiss on August 13, 2001. Applicant was represented in this PCR action by O. Carlisle Edwards, Esquire. An evidentiary hearing was convened on

May 28, 2002. The State was represented by Assistant Attorney General David A. Spencer. Applicant was present the hearing and testified on his own behalf. Also testifying was Applicant's former trial counsel, A. Randolph Hough, Esquire and Darlene Robinson. On July 24, 2002, the Honorable Howard P. King issued an Order of Dismissal where the court found Applicant's allegations were without merit.

Applicant then filed a Motion to Alter or Amend Pursuant to Rule 59(e) SCRCF. Judge King denied this motion by order dated October 14, 2002.

Applicant appealed the decision made by the PCR court. Assistant Appellate Defender Tara S. Taggart represented Applicant in his appeal and submitted a Johnson¹ Petition for Writ of Certiorari and requested to be relieved as counsel on June 18, 2003. The South Carolina Court of Appeals dismissed the appeal by order dated December 4, 2003. The remittitur was issued on December 23, 2003.

2001-cv-02607

Applicant then filed a petition for writ of habeas corpus on June 15, 2001, in federal district court. On August 3, 2001, Respondent filed its return and motion for summary judgment requesting that the case be dismissed for failure to exhaust available state court remedies since Applicant's PCR case was pending at that time. The federal district court granted Respondent's motion for summary judgment and dismissed the case without prejudice by Order dated October 11, 2001.

2004-cv-00945-HMH

Applicant then filed a second petition for writ of habeas corpus on March 30, 2004, in federal district court. Petitioner raised the following issues verbatim:

1. Denial of effective assistance of counsel at trial and on appeal.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

- a. Petitioner argues that counsel failed to develop a viable defense strategy and withheld crucial available documentations evidence from the jury deliberation and fro the petitioner knowledge. Also, counsel failed to raise or preserve all meritorious issues in appellate proceedings.
2. Conviction obtained by Officer Blackwell's oral statements in violation of Jackson v. Denno. Petitioner argues that he alleged oral statements by this officer were founded eleven months after the incident, and the evidence will show he committed perjury. Also, while the evidence show he knowingly and intentionall used perjured testimony, he wilfully violated the petitioner Miranda warnings.
3. Did trial court have subject matter jurisdiction to try and sentence petitioner, where indictments not filed with the Clerk of Court.

On July 20, 2004, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated March 10, 2005, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on March 31, 2005. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on October 4, 2005.

2006-CP-40-06122

Applicant subsequently filed an application for post-conviction relief on October 17, 2006, where he alleged he was being held unlawfully for the following reasons verbatim:

1. Ineffective assistance of counsel,
 - a. Trial counsel failed to request Brady material.
2. Prosecutors violated Brady v. Maryland,
 - a. Prosecutors failed to comply with Rule 5, witnesses statements; and victim's bond hearing statements.
3. Newly discovered evidence.

Applicant then filed a document captioned "Amended Application for Post-Conviction Relief/State Habeas Corpus" dated November 30, 2006 where he reiterated the issues listed above as follows:

1. Was trial counsel Ineffective for not having the unavailable Witnesses' written statements before trial? And, was the Defendant denied the right to confront and cross-examine the victims?

2. Was trial Counsel Ineffective for failing to correct Officer Blackwell perjury testimony about two Reports required by law? And, did the false entry on the Reports by this Officer violated Defendant's due process rights to have a fair trial?
3. Was trial Counsel Ineffective for failing to protect Defendant's constitutional rights, When the Prosecution failed to give the defense copies of Victim's Bond setting statements in violation of Brady v. Maryland?

The State filed its Return and Motion to Dismiss on or about February 9, 2007, requesting that the application be summarily dismissed. A Conditional Order of Dismissal was issued by the court and filed on August 18, 2008, provisionally denying and dismissing the case, while giving Applicant twenty (20) days from the date of service of said order in which to show why the dismissal should not become final. A Final Order of Dismissal was signed by Judge Barber on October 16, 2009. The court found that the application was barred as successive and untimely filed.

Applicant filed a notice of appeal. Applicant filed a *pro se* Petition for Writ of Certiorari with the South Carolina Supreme Court. The Supreme Court dismissed Applicant's appeal by order dated April 16, 2010, finding there was no arguable basis for asserting that the determination by the lower court was improper. Applicant then filed a Petition for Rehearing with the Supreme Court on April 27, 2010 which was denied. The remittitur was issued on May 14, 2010.

2012-CP-40-02064

Applicant subsequently filed a third application for post-conviction relief on March 16, 2012, where he alleged he was being held unlawfully for the following reasons verbatim:

1. The Applicant Donald E. Robinson in this present application did not have the services of competent legal counsel during the course of the PCR case No. 2000-CP-40-4628.
2. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-

- 40-4628. The Applicant was unlawfully denied and deprived of right to due process during the PCR process.
3. As a result of the fact that the Applicant did not have the services of competent legal counsel during the court of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the right to the equal protection of the law during the PCR process.
 4. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the right to have meaningful access to the court during the PCR process.
 5. As a result of the fact that the Applicant did not have the services of competent legal counsel during the course of PCR case No. 2000-CP-40-4628. The Applicant was unlawfully denied and deprived of the kind of post-conviction relief process that he was legally and procedurally entitled to under South Carolina law.
 6. As a result the Applicant was unlawfully denied and deprived of post-conviction relief process that he is still legally and procedurally entitled to until this date under South Carolina law. § 17-27-90.

Applicant set forth sixty (60) pages of *pro se* allegations as to why he is currently being held in custody unlawfully. Respondent filed its Return and Motion to Dismiss on March 21, 2012, requesting the application be summarily dismissed as untimely filed and as successive in nature. Judge Barber issued a Conditional Order of Dismissal on March 28, 2012, which gave Applicant twenty (20) days to respond. After reviewing Applicant's responses in their entirety in conjunction with the record and pleadings in the matter, the Judge Barber signed a Final Order of Dismissal on July 13, 2012.

CURRENT APPLICATION

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

1. The Applicant was denied and deprived of the services of competent legal counsel during PCR. He failed to amend the Applicant PCR Application as and is required by South Carolina law.
2. The Applicant was denied and deprived of Constitutional rights, when investigator Smith lied to the Magistrate Judge, that the Defendant unlawfully entered the victims house for Burglary First Degree. S.C. Code sec, 16-11-311.

3. The Applicant was denied and deprived of constitutional rights, when solicitor Warren B. Giese lied to the Grand Jury, that the Defendant willfully and unlawfully entered the victims house for Burglary First degree. S.C. Code sec, 16-11-311.
4. The Applicant was denied and deprived of constitutional rights when charged with Burglary first degree, when he never willfully and unlawfully entered the victims house. And when Solicitor Giese deliberately lied to the Grand Jury to get the indictment, that which deprived the trial court of subject matter jurisdiction in this case.

Before this Court are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. 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.

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 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 v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also 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, et. seq. 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 found guilty of the offenses he challenges on January 17, 1997. The remittitur from Applicant's direct appeal was issued on October 27, 2000, so he was therefore required to file his application on or before **October 29, 2001**. This Application was filed on December 10, 2013, which was nearly twelve (12) 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) (2003) authorizes the Court to "grant a

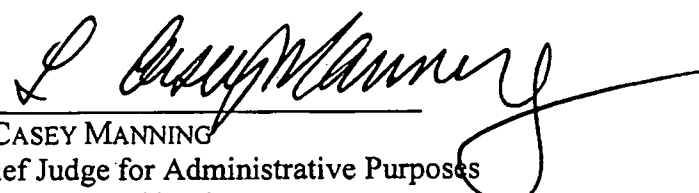
motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.


III. CONCLUSION

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 with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 9 day of June, 2014.


L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit


_____, South Carolina