

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 Timothy Charley, #265146, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-38-01016

2012 SEP 11 - 5 AM 11: 54  
 FILED FOR RECORD  
 CLERK OF COURT  
 ORANGEBURG, SC

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed June 28, 2012. In its return, the Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted during the July 2004 term of the Orangeburg County Grand Jury for Armed Robbery (2004-GS-38-1055). He was represented by Crystal Chapman, Esquire. On September 9, 2004, the Applicant pled guilty before the Honorable James C. Williams, Jr., and was sentenced to fifteen years imprisonment. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for post-conviction relief on May 7, 2009 (C.A. No. 2009-CP-38-0796). The Applicant raised the following issues in his first post-conviction relief:

1. "Written Notice Requirement."
2. "Brady Violation."
3. "Prosecutorial Misconduct."
4. "Involuntary plea."

ATTEST: TRUE COPY  
*Wingja B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

The State made its Return and Motion to Dismiss as barred by the one-year statute of limitations on June 24, 2009. A Conditional Order of Dismissal was signed by the Honorable James C. Williams, Jr. on June 29, 2009. Applicant filed two responses to the Conditional Order. In a "Motion of Attachment", dated June 22, 2009 and filed June 26, 2009, the Applicant asserted additional grounds for relief. On July 2, 2009; Applicant filed a "Motion for Summary Judgment Rule 56 S.C.R.C.V.P." In this response; Applicant asserted variances between the information contained in the arrest warrant and a police incident report. After reviewing the responses, the Honorable Diane S. Goodstein, denied and dismissed the application with prejudice in a Final Order dated January 25, 2010, and filed February 26, 2010.

Applicant filed a second post-conviction relief application on October 29, 2010 (2010-CP-38-1602). In this application, Applicant set forth the following grounds for relief:

1. Denial of Due Process.
  - a. Applicant was pro se in prior PCR application and was not told of right to appeal.<sup>1</sup>
2. Ineffective Assistance of Counsel.

The Respondent made its Return and Motion to Dismiss on April 4, 2011 requesting the application be summarily dismissed as successive and barred by the statute of limitations. In a Conditional Order dated April 7, 2011, the Honorable Edgar W. Dickson, found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty days in which to respond. After receiving no response from Applicant, Judge Dickson signed a Final Order dismissing the application on September 8, 2011 and entered on September 27, 2011. The Applicant did not appeal the denial of his second application for post-conviction relief.

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<sup>1</sup> In the Final Order of Dismissal, Applicant was advised that he must file an appeal within 30 days and was provided reference to Rule 203 and Rule 243, SCACR.

## ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Fraud upon the Court."
2. "Violation to Petitioner's Due Process Amendment Rights."
3. "Violation to Petitioner's Due Process Rights to 28 U.S.C. §1915, Rule 4 and 55 of the Federal Rules of Civil Procedure."

## FINDINGS OF FACT AND CONCLUSION OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Furthermore the relief sought by the Applicant in the application is not a cognizable relief claim for post-conviction relief under any of the statutory grounds.

This Court finds that the current application for post-conviction relief must also be summarily dismissed because it is successive to his prior application for post-conviction relief.

S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application 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 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 were or 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, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

This Court finds, further, that this Application for Post-Conviction Relief should 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 to -160. 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 convicted of the offense(s) he challenges in this Application on September 9, 2004. This Application was filed on June 28, 2012, well 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) (1985) 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 the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

#### CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

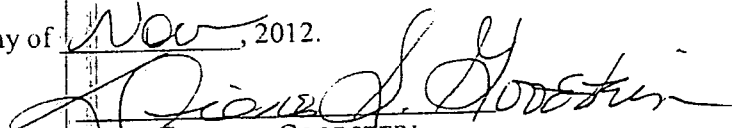
When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any

further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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

Office of the Attorney General  
Attn: Megan E. Harrigan, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this B day of Nov, 2012.



DIANE SCHAFFER GOODSTEIN  
Chief Administrative Judge  
First Judicial Circuit Court

Orangeburg, South Carolina.