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STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE
COUNTY OF ANDERSON ANDERSON SC IN THE COURT OF COMMON PLEAS
S.C. Supreme Court
TENTH JUDICIAL CIRCUIT

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Matthew Thomas Pickens, Jr., #324558

COMMON PLEAS AND
GENERAL SESSIONS

2011-CP-04-2061

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

A TRUE COPY

MAR 29 2013

Richard R. Kuty
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed July 5, 2011. In its return, the Respondent requested the application be summarily dismissed.

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the April 1988 term of the Anderson County Grand Jury for Criminal Conspiracy, Burglary, Assault and Battery of a High and Aggravated Nature and Criminal Sexual Conduct - First Degree (1988-GS-04-0476/0477/0478/0483). Ronald Treadwell, Esquire, represented him on the charges. On September 21, 1988, Applicant proceeded to jury trial before the Honorable Tom J. Ervin where he was convicted of all charges as indicted. Applicant was sentenced to five

(5) years imprisonment for Criminal Conspiracy, ten (10) years for Assault and Battery of a High and Aggravated Nature, thirty (30) years for Criminal Sexual Conduct – First Degree, and life for Burglary – First Degree.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pickens, Op. No. 90-MO-137 (S.C. Ct. App. filed September 28, 1990).

Applicant filed his first application for Post-Conviction Relief on June 12, 1991 (1991-CP-04-885), raising the following claims: (1) ineffective assistance of counsel for (a) failure to file any pretrial motions, including a Brady motion, regarding the two later charges brought just before Applicant's trial; (b) failure to advise of right to request mercy on Burglary charge pursuant to Watson v. State; (2) denial of due process and equal protection because counsel failed to have warrants served, Applicant arraigned, and a preliminary hearing; and (3) ineffective assistance of appellate counsel for raising only one issue (whether Applicant's convictions for criminal sexual conduct and assault and battery violated the double jeopardy clause) and that additional meritorious issues existed for Applicant's direct appeal. The State made its Return on October 21, 1991. An evidentiary hearing was convened into the matter on January 13, 1993, before the Honorable Ellis B. Drew, at which Applicant was present and represented by Harold Lowery, Esquire and Scott Robinson, Esquire. At the hearing, Applicant raised additional issues of ineffective assistance of counsel: failure to present defense; failure to adequately on right to testify at trial; failure to request hearing to ascertain whether prior bad act

as a juvenile could be introduced at trial; failure to cross-examine co-defendant; and failure to call witnesses. By order dated April 15, 1993 and filed on April 28, 1993, Judge Drew denied and dismissed the application with prejudice.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on November 18, 1993, and dismissed the appeal on December 6, 1993.

In 2005, Applicant was subsequently indicted for Failure to Register as a Sex Offender (2005-GS-04-1735). He was represented by John Stathakis, Esquire. On July 13, 2005, Applicant pled guilty and was sentenced by the Honorable J. Cordell Maddox, Jr. to ninety (90) days confinement. Applicant did not appeal this conviction or sentence.

Applicant subsequently filed a second application for PCR on April 6, 2006 (2006-CP-04-1278), raising the following claims: (1) lack of subject matter jurisdiction; and (2) ineffective assistance of counsel. The State made its Return and Motion to Dismiss on August 15, 2006. A Conditional Order of Dismissal In Part was issued by the Honorable Alexander S. Macaulay on August 28, 2006, barring Applicant from raising any allegations pertaining to his 1988 convictions. On October 17, 2006, Judge Macaulay issued a Final Order In Part regarding the 1988 convictions. An evidentiary hearing solely on the issues pertaining to Applicant's 2005 conviction was held on August 15, 2007, at the Anderson County Courthouse. Applicant was present and represented by Hugh Welborn, Esquire. Judge Macaulay denied and dismissed the application with prejudice by Order issued on September 7, 2007.

Applicant filed a timely Notice of Appeal of the order dismissing his PCR, and a Johnson petition was filed on his behalf. After receiving numerous *pro se* submissions from Applicant, the South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari by order dated November 6, 2008. The Remittitur was sent November 24, 2008.

Applicant filed a third application for PCR on November 4, 2010 (2010-CP-04-3954), raising the following claims: (1) the trial court lacked jurisdiction to try petitioner as an adult; and (2) petitioner suffered a gross miscarriage of justice. The State made its Return and Motion to Dismiss on December 17, 2010. A Conditional Order of Dismissal was issued by the Honorable Alexander S. Macaulay on December 22, 2010. The Applicant subsequently filed a "Motion in Opposition to Respondent's Request for Conditional Order of Dismissal" on January 7, 2011; raising the following claims: (1) that the trial court lacked jurisdiction to try Applicant as an adult or has suffered a gross miscarriage of justice; (2) that all South Carolina Code reference was in effect at the time Applicant committed the offense as a 17 year old juvenile; and (3) whether Applicant waived his constitutional right to a fair trial. The Honorable R. Lawton McIntosh issued a Final Order denying and dismissing the application for PCR on April 5, 2011.

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

1. Ineffective Assistance of Trial Counsel.
 - a. Counsel did not object to the proceedings by the trial (reviewing) court whether or not the court had otherwise waived or made a finding that Petitioner's juvenile waiver hearing comported with the requirements of Due Process of fundamental fairness.

- b. Juvenile waiver hearings must measure up to the essentials of due process and fair treatment... There were not required demonstration of proof of juvenile mental competency.
 2. Violation of Due Process of Law – Equal Protection 14th Amendment of the United States.
 3. Trial Judge Abuse of Discretion.
 - a. Trial judge had a duty to act and conduct a review under State law that a sufficient juvenile waiver hearing was conducted and transfer of juvenile to adult court was done in a manner that afforded juvenile offenders essentials of due process and fair treatment.
 4. Ineffective Assistance of PCR Counsel
 - a. Attorney Scott Robinson who represented Applicant during Applicant's PCR evidentiary hearing on January 13, 1993, failed to amend Applicant's application to include the aforementioned issues.
 5. Mental Incompetency – Applicant did not understand anything that was going on at his trial or at his PCR hearing.
- On January 13, 2012, Applicant filed a document captioned "Return to Opposition to

Defendant's Motion for Conditional Order of Dismissal" raising the following issues:

1. S.C. Code Ann. §17-27-90 and §17-27-45(a) should not apply based on mental incompetence of Applicant;
2. The issues Applicant is alleging in his current PCR should have been raised in his prior application but due to Applicant's inability to manage his affairs or understand his legal rights and liabilities Applicant was unable to assist his trial attorney or his PCR counsel;
3. Applicant asks the court to take under consideration to toll the statute of limitations due to Applicant's mental incompetency which denied him the opportunity to bring a claim in a meaningful time and manner.

On March 1, 2012, Applicant filed a document captioned "Motion to Amend" raising the following issues:

1. Ineffective Assistance of Counsel
 - a. Counsel was deficient for not objecting to the sentence of Applicant when he was a 17 year old which trial Judge sentenced

to life for Burglary – First Degree, (5) years imprisonment for criminal Conspiracy, (10) years for Assault and Battery of High and Aggravated Nature, thirty (30) years for Criminal Sexual Conduct – First Degree...with no prior Assaultive convictions as an adult.

On April 18, 2012, Applicant filed a document captioned “Motion to Alter” requesting the following: “I would like to alter the caption of my pleaing from Ineffective assistance of counsel to Newly Discovered Evidence under new case law Roper v. Simmons, 543 U.S. 551 (2005).

On May 8, 2012, Applicant filed a document captioned “Affidavit” raising the following issues:

1. There is evidence in the record that Judge failure to conduct a competency hearing once defense counsel brought it to Judge attention that Mr. Pickens was a 17 year old juvenile at the time. (See Transcript of Record Pp. 427, line 15-24).
 - a. At this mitigation stage the Judge had a duty to act and conduct a review under State law §44-23-410 “Determination of capacity of persons charged with crime to stand trial.”
 - b. He [applicant] did not understand his legal rights and liabilities and the he was in fact 17 years old kid and Judge nor counsel at trial or PCR never address Mr. Pickens mental capacity, (See so attached Pp. 26-37), nor could he help his counsel put up a defense in his own behalf because of lack of understanding.
 - c. He was never examined by no experts to determine his mental competency which is a violation of the Law and his Constitutional Right to a fair trial.

On July 2, 2012, Applicant filed a document captioned “Motion to Amendment Rule 15 S.C. Rul Civ Pro (c)” raising the following issue:

1. His 2006 municipal court conviction was unlawful because he was not “represented by counsel which was a violation his sixth amendment right to counsel”

On November 20, 2012, Applicant filed a document captioned "Request for production of documents requesting the production of the following:

1. "A complete record of Mr. Pickens 1985 juvenile records pursuant to Rule 34 of SCRCP."

On December 20, 2012, Applicant filed a document captioned "motion for Supplemental pleadings" raising the following issue:

1. The 1988 sentencing judge imposed an unlawful sentence upon him because the judge did not take into account "a juveniles age at the offense, his diminished capacity, his diminished culpability and heightened capacity for change."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must 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 first series of offenses he challenges in this Application on September 21, 1988. Applicant was convicted of the second series of offenses he challenges in this Application on July 13, 2005. The Applicant was therefore required to file his application

before July 1, 1997 for his first conviction and July 13, 2006 for his second conviction. This Application was filed on July 5, 2011, which was over fourteen years on the first conviction after the statutory filing period had expired and over four years on the second conviction 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.

Further, this Court finds this application is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

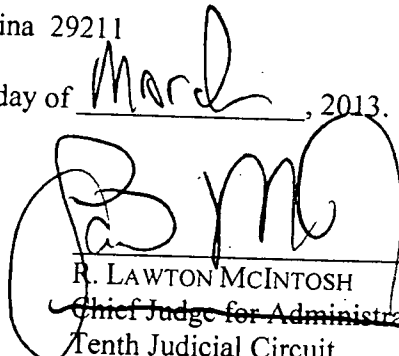

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in prior post-conviction relief proceedings. The public interest in finality

of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRC, the Court intends to summarily dismiss these claims as barred by *res judicata*.

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, factual or legal, with the Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: John W. Whitmire, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 27 day of March, 2013.


R. LAWTON MCINTOSH
~~Chief Judge for Administrative Purposes~~
Tenth Judicial Circuit 

Anderson, South Carolina.

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