

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Tyri Landron,
S.C.D.C. No. #309930,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2013-CP-24-1371

CONDITIONAL ORDER OF DISMISSAL

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

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In response to the post-conviction relief application filed December 31, 2013, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Applicant was indicted at the August 2008 term of the Greenwood County Grand Jury for trafficking in cocaine (2008-GS-24-1321) and trafficking on cocaine within the proximity of a playground (2008-GS-24-1322). Janna Nelson, Esquire, represented the Applicant.

On August 25, 2009, the Applicant pled guilty to the lesser included offense of trafficking in cocaine 10-28 grams, 2nd offense, and to trafficking in cocaine within proximity of a playground. The Honorable Eugene C. Griffith, Jr. sentenced him to concurrent terms of confinement, pursuant to a recommendation from the State, for a period of twelve (12) years, provided upon the service of ten (10) years for trafficking in cocaine, 2nd offense and twelve (12) years for trafficking in cocaine

within proximity of a playground. The Applicant did not appeal his sentences or convictions.

Applicant filed an application for post-conviction relief (PCR) on September 18, 2012 (2012-CP-24-1099). In that application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

- I. "Based on the collective surrounding facts and circumstances of my charge and Counsel inaction, heavy case load and lack of knowledge pertaining to my defense lead to my wrongful conviction."
 - a. "Trial counsel failed to properly investigate the case in which there was an (sic) clear violation of my forth (sic) amendment (1) never should've been pulled over (2) never should've been subject to pat-down (3) pat-down was beyond the plain-feel doctrine (4) I should've not been order to exit vehicle."

The Respondent filed its Return and Motion to Dismiss on or about October 30, 2012. The Honorable Frank R. Addy, Jr., filed a Conditional Order of Dismissal on November 19, 2012. By Final Order filed January 25, 2013, Judge Addy denied and dismissed the application with prejudice.

Applicant timely served and filed a notice of appeal. However, the South Carolina Supreme Court filed an Order on March 15, 2013, summarily dismissing his appeal as follows:

The circuit court issued a conditional order of dismissal, which gave petitioner twenty days to show cause why the conditional order should not become final. According to the final order of dismissal, petitioner did not file a response to the conditional order. Petitioner has now filed a notice of appeal.

Where, as here, a PCR applicant fails to file a response to a conditional order of dismissal, this Court has held that the applicant cannot appeal. *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006). Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221 (b) of the South Carolina Appellate Court Rules.

The Remittitur was sent on April 2, 2013.



Applicant also filed a Petition for a Writ of Habeas Corpus in the United States District Court for the District of South Carolina (C/A No. 6:13-00832-TMC-KFM). The Respondent filed its Return on July 31, 2013. By Order filed December 16, 2013, the Honorable Timothy M. Cain, United States District Judge, granted summary judgment in favor of the Respondent and denied the Petition.

II.

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

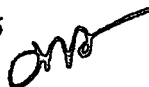
1. "Newly Discovered evidence of ineffective assistance of counsel."
 - a. "Counsel's failure to articulate a 4th Amendment claim."
2. "Officer's violate plaintiff's 4th Amendment."
 - a. "Officer's didn't have reasonable suspicion for traffic stop."

III.

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

IV.

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 he challenges in this Application on October 25, 2009. This Application was filed on December 31, 2013, which was well after the statutory filing period had expired.



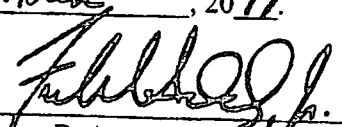
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary 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 finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

V.

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

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 10th day of March, 2014.


FRANK R. ADDY, JR.
Chief Administrative Judge
Eighth Judicial Circuit Court


_____, South Carolina