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EDGEFIELD COUNTY
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STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2013 AUG 15 PM 2:07

Case No. 2010-CP-19-093

RECEIVED

OCT 15 2014

Alexander Weaver,
S.C.D.C. No. 294431,

Applicant,

v.

State of South Carolina,

Respondent.

S.C. Supreme Court
CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 15, 2010. The Respondent made its Return, requesting 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 Edgefield County Clerk of Court. The Applicant was indicted at the March 2003 term of the Edgefield County Grand Jury for murder (2003-GS-19-171) and strong armed robbery (2003-GS-19-172). He was represented by O. Lee Sturkey, Esq. On June 26, 2003, the Applicant pled guilty as charged. He was sentenced by the Honorable William P. Keesley to confinement for thirty years for murder and fifteen years for armed robbery. The sentences were to be served concurrently. The Applicant did not appeal his guilty plea or sentence.

2004-CP-19-093

Applicant filed his first application for post-conviction relief on July 15, 2010. Applicant was represented by Michael Chesser, Esq. An evidentiary hearing into the matter was convened on December 14, 2005. Applicant alleged he was being held unlawfully for:

1. Ineffective assistance of counsel:
 - a. failure to investigate the State's evidence.
 - b. failure to investigate and pursue defenses in Applicant's case.
 - c. failure to advise Applicant of his appellate rights.
2. Involuntary guilty plea:
 - a. Applicant was not advised of the critical elements of the charges he pled guilty to.

The Honorable Clyde N. Davis, Jr., denied and dismissed the application with prejudice and granted Applicant review of his guilty plea and sentence pursuant to White v. State, 263 S.C. 110, in an order dated April 4, 2006.

Applicant appealed the PCR judge's order of dismissal. LaNelle C. Durrant, Esq., of the Office of Appellate Defense perfected Applicant's Petition for a Writ of Certiorari. The South Carolina Supreme Court dismissed Applicant's Petition in a Memorandum Opinion, (No. 2008-MO-008, filed February 11, 2008).

2010-CP-19-266

Applicant filed his current and successive application for post-conviction relief on July 15, 2010. 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 PCR counsel:
 - a. "Denial of due process due to counsel's ineffectiveness."
 - b. PCR Counsel failed to raise all issues and failed to file a Rule 59(e)."
2. "Trial Court lacked subject matter jurisdiction-actual innocence"
 - a. "Plea was not lesser included plea/defendant did not waive presentment."
 - b. "State presented no findings of intent."

3. "Denial of Due Process and equal protection.:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

This Court summarily dismisses the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (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., 305 S.C. at 450, 409 S.E.2d at 394. 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. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this Court summarily dismisses the application because it is successive.

II.

This Court summarily dismisses this application 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 entered his guilty plea in 2003. This application was filed in 2010, six years after the expiration of the filing deadline.

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 summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

III.

This Court summarily dismisses this application for summarily for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. 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; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief, nor is it a sufficient reason to justify allowing an otherwise untimely and successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-

conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under ‘17-27-90.’” Aice, 305 S.C. at 451, 409 S.E.2d at 394. The recent decision set forth by the United States Supreme Court in Martinez v. Ryan, No. 10-1001 (U.S. March 20, 2012), has no bearing on an Applicant’s ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions. In fact, in the opinion as recited in the informal slip copy, the Court specifically notes that their decision is not addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, stating “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” Id. Therefore, Applicant’s contention that he received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application. See Also Kelly v. State (The Supreme Court of South Carolina, Appellate Case No. 2013-001079) (filed June 20, 2013). Accordingly, this Court summarily dismisses the allegation for a failure to state a claim entitling Applicant to relief. Therefore, this Court summarily dismisses this application for post-conviction relief.

IV.

This Court summarily dismisses Applicant’s allegation that the plea court lacked jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be

made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

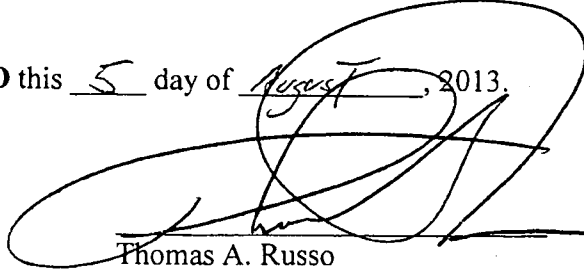
An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, this Court summarily dismisses this allegation.

CONCLUSION

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 Edgefield County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Walt Whitmire, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 5 day of August, 2013.



Thomas A. Russo
Chief Administrative Judge
Eleventh Judicial Circuit

LEXINGTON, South Carolina.