

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Landis Allen Moragne, )  
 S.C.D.C. No. 302976, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2013-CP-23-6129

**RECEIVED**

OCT 17 2014

**S.C. Supreme Court**

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
 CLERK OF COURT  
 GREENVILLE COUNTY, S.C.  
 PAUL B. ...  
 2014 OCT 17 PM 3 01

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 13, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for possession of a weapon during commission of a violent crime (2004-GS-23-6129, count 1) and murder (2004-GS-23-6129, count 2). He was represented by Daniel J. Farnsworth, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On January 11, 2006, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of five years for possession of a weapon during commission of a violent crime and life imprisonment for murder.

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of

Appeals affirmed the Applicant's convictions and sentences. State v. Moragne, Op. No. 2007-UP-391 (S.C. Ct. App. filed Sept. 25, 2007).

**2008-CP-23-3365**

The Applicant filed an application for post-conviction relief on May 7, 2008 (2008-CP-23-3365). The Petitioner raised the following issues in his application:

1. Ineffective assistance of trial counsel:
  - a. Failure to request the lesser-included offense of manslaughter.
  - b. Failure to object to comment in State's closing argument about "matters not sustained by evidence."
  - c. Failure to object to burden-shifting instructions and inappropriate comments from trial judge.

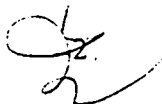
An evidentiary hearing was held on February 25, 2009 at the Greenville County Courthouse. Rodney W. Richey, Esquire represented the Petitioner. The Honorable John C. Few dismissed the PCR application by order dated April 7, 2009 and filed April 20, 2009.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court denied the petition for writ of certiorari on November 5, 2010. The remittitur was sent on November 23, 2010.

**2011-CP-23-7737**

The Applicant filed a petition for a writ of habeas corpus on November 18, 2011 (2011-CP-23-7737). The Honorable G. Edward Welmaker issued a conditional order of dismissal that was filed on March 30, 2012. Judge Welmaker issued a final order of dismissal that was filed on June 25, 2012.

The Applicant filed a notice of appeal at the South Carolina Court of Appeals. By order filed February 7, 2013, the Court of Appeals dismissed the matter based on the Applicant's



failure to provide proof that he served the notice of appeal on the opposing party. The remittitur was sent on March 15, 2013.

## II.

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

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of PCR counsel.
3. "Impeachment of state expert witness."
4. "Procuction [sic] misconduct."
5. "Evidence."
6. "Burden shifting instructions."
7. "Selective procution [sic]."
8. Trial counsel failure to investage [sic]."

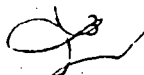
## III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 Applicant was convicted of the offenses he challenges in this application on January 11, 2006 and the South Carolina Court of Appeals affirmed his convictions and sentences in September 2007. This application was filed on November 13, 2013, which was several 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. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d



638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

#### IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina 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.

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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the



current allegations in his previous post-conviction relief application, the application is dismissed.

V.

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 Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

**AND IT IS SO ORDERED** this 24 day of June, 2014.



\_\_\_\_\_  
Letitia H. Verdin  
Chief Administrative Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina.



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

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2306151

FILED  
CLERK OF COURT  
PAUL B. WICKENSUMER  
2014 JUL 1 PM 3 01

Landis Moragne vs. South Carolina State Of

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):**  
SCRC (Vol. Nonsuit):  Rule 43(k), SCRC (Settled):  Other: \_\_\_\_\_  
 Rule 12(b), SCRC:  Rule 41(a),  
 Rule 40(j), SCRC:  Bankruptcy:
- ACTION STRICKEN (CHECK REASON):**  
 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: \_\_\_\_\_

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;  Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this \_\_\_\_\_

Court Reporter: \_\_\_\_\_

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the \_\_\_\_\_ and a copy mailed first class this \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Landis Moragne 302976 Lee Correctional Institution  
990 Wisacky Hwy Bishopville, SC 29010

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensumer - Greenville County Clerk Of Court  
- Clerk of Court