

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Robert L. Geter, #282714,)
Applicant,)

2013-CP-40-3804

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

2013 DEC -5 AM 11:25
JENNIFER W. HUBBARD
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before this Court by way of an Application for post-conviction relief filed July 1, 2013. In its return, Respondent requested the Application be summarily dismissed.

PROCEDURAL HISTORY

Applicant was indicted at the January 2002 term of the Richland County Grand Jury for First Degree Burglary (02-GS-40-705); Armed Robbery (02-GS-40-641); and Assault and Battery of a High and Aggravated Nature (02-GS-40-640). He was represented by George Johnson, Esquire. On March 13, 2002, Applicant proceeded to trial after which he was found guilty of the charges. He was sentenced by the Honorable Henry F. Floyd to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented by Tara Taggart, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Geter, No. 2003-UP-704 (Ct. App. December 3, 2003). The case was remitted to the trial court on December 22, 2003.

Applicant filed his first application for post-conviction relief on November 23, 2004 (2004-CP-40-5492). In his application, Applicant set forth the following grounds for relief:

1. Subject matter jurisdiction
2. Invalid indictment
3. Ineffective assistance of counsel

The State made its Return on August 12, 2005. An evidentiary hearing was convened on June 22, 2006 at which Applicant was present and represented by Charlie J. Johnson, Jr., Esquire. In a written order dated July 31, 2007, and filed August 1, 2007, the Honorable Alison Renee Lee dismissed the application with prejudice.

Applicant then filed a Notice of Appeal. The South Carolina Supreme Court denied the Petition for Writ of Certiorari on November 6, 2008. The Remittitur was issued on November 24, 2008.

Applicant filed an application for writ of habeas corpus on October 28, 2009. The Honorable Cameron McGowan Currie accepted the Report and Recommendations set forth by the Honorable Joseph R. McCorey, and on June 8, 2010 granted Respondent's motion for summary judgment.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the prior post-conviction relief and habeas petition records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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 counsel
2. Denial of fair trial
3. Prosecutorial misconduct

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 Applicant's prior application for post-conviction relief filed on May 17, 2005. 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 a sufficient reason why he could not have raised his current allegations in his first 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 (1991).

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 offenses he challenges in this Application on March 13, 2002. This Application was filed on July 1, 2013, which well exceeds the statutory filing period.

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 because it is successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Richland 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 2 day of December, 2013.



L. CASEY MANNING
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina.