

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Larry Norman Gambrell,)
S.C.D.C. No. 209770,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2014-CP-39-0063

CONDITIONAL ORDER OF DISMISSAL

JUL 10 PM 2:25
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 15, 2014. 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 Pickens County. The Applicant was indicted at the October 1993 term of the Pickens County Grand Jury for first-degree criminal sexual conduct (CSC) (1993-GS-39-1783), assault with intent to commit first-degree CSC (1993-GS-39-1784), two counts of kidnapping (1993-GS-39-1785, -1786), assault and battery with intent to kill (ABWIK) (1993-GS-39-1787), and two counts of first-degree burglary (1993-CP-39-1788, -1789). He was represented by E.P. "Bill" Godfrey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 1, 1994, the Honorable C. Victor Pyle, Jr. sentenced him to concurrent sentences of thirty years for first-degree CSC, thirty years for assault with intent to commit first-degree CSC, ten years for



each count of kidnapping, ten years for ABWIK, and life imprisonment for each count of first-degree burglary.

A notice of appeal was filed at the South Carolina Supreme Court. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Supreme Court dismissed the appeal. State v. Gambrell, Op. No. 95-MO-312 (S.C. Sup. Ct. filed October 5, 1995).

1995-CP-39-0711

The Applicant filed a PCR application on December 14, 1995 (1995-CP-39-0711). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Lack of preparation.
 - b. Failure to vigorously cross-examine witnesses.
 - c. Lack of communication with the Applicant.
 - d. Failure to develop exculpatory forensic evidence of blood samples and semen stains.

In an "Amendment to Application for Post-Conviction Relief" filed July 12, 1996, the Applicant made the following allegations:

1. Denial of due process.
2. "[O]ne juror knew the Applicant and Applicant knew him and that there has been conflict between Applicant and this alleged juror."
3. "[T]he alleged juror was prejudicial and as well as bias toward the Applicant."
4. Trial counsel "knew that the Applicant knew the alleged juror as well as the juror knowing the Applicant."
5. Trial counsel "should of brought these issues up concerning the alleged juror to the trial courts attention and should have motioned the court for a mistrial."

An evidentiary hearing was held on April 28, 1997 at the Pickens County Courthouse.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).



Patti Brady, Esquire represented the Applicant. The Honorable Thomas L. Hughston, Jr. denied and dismissed the PCR application by order filed June 12, 1997.

The Applicant filed a notice of appeal. Tara S. Taggart, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court denied the petition for writ of certiorari on November 5, 1999.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (9:00-0593-23RB). The Respondent submitted a motion for summary judgment on May 15, 2000. The Honorable Wallace W. Dixon, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated October 13, 2000. On March 29, 2001, the Honorable Patrick M. Duffy, United States District Judge, issued an order granting the motion for summary judgment.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed February 12, 2003, the Court of Appeals dismissed the appeal because it was not timely filed.

II.

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

1. Juror misconduct.
 - a. "Fact issue remained whether claim of juror misconduct in failing to disclose during voir dire that his father had in fact filed an arrest warrant against [the Applicant]."

In an "Amendment to P.C.R." filed on February 3, 2014, the Applicant makes the following allegation:



1. Miscarriage of justice established because of juror misconduct.

In a "Brief Upon a Non-Waiver of Juror Misconduct Issue 17-27-90" filed February-14, 2014, the Applicant makes the following allegation:

1. "[D]id not knowingly and intelligently waive juror misconduct issue pur to 17-27-90 PCR statute."

III.

This Court finds this matter should be summarily dismissed because the Applicant 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:

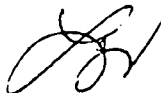
An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on March 1, 1994 and his appeal was dismissed on October 5, 1995. This application was filed on January 15, 2014, which was many 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.

This Court notes the Applicant argues he is entitled to an evidentiary hearing based upon the holding of McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). This Court finds this argument is without merit. This Court notes the Applicant was aware of a potential issue of juror misconduct when he filed the amendment to his first PCR application because he raised this



issue at that time. This Court further notes this issue was addressed in the prior PCR action, PCR appeal, and federal habeas corpus actions. This issue is summarily dismissed.

VI.

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 Pickens 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 1 day of July, 2014.



Letitia H. Verdin
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

