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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Bennie James Riser, #218912,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT **RECEIVED**

2011-CP-42-1034
 JAN 20 2015
 S.C. Supreme Court

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed March 2, 2011, but received by the Respondent on July 11, 2012. Respondent made its Return and Motion to Dismiss on or about May 29, 2013.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Spartanburg Clerk of Court. He was indicted at the June 2002 term of the Court of General Sessions for Spartanburg County for three (3) counts of criminal sexual conduct, first degree (02-GS-42-2321, -2322, -2323), three (3) counts of kidnapping (02-GS-42-2318, -2319, -2320), three (3) counts of robbery while armed with a deadly weapon (02-GS-42-2315, -2316, -2317), two (2) counts of carjacking (02-GS-42-2313, -2314) and one (1) count of unlawful possession of a pistol (02-GS-42-2324). The Applicant was represented by James E. Hatcher, Esquire. The Applicant pled guilty to all charges as indicted on March 7, 2003. The Honorable J. Derham Cole, sentenced him to confinement for twenty (20) years for each charge of carjacking, a concurrent term of thirty (30) years for each charge of robbery while armed with a deadly weapon, a concurrent term of thirty (30) years for each charge of kidnapping and a concurrent term of one (1) year for unlawful possession of a pistol (02-GS-42-2324). Judge Cole also sentenced Applicant to thirty (30) years for each charge of criminal

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sexual conduct, first degree, to each be served consecutively.

The Applicant filed a timely Notice of Appeal and an Appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal by written Order. State v. Riser, Op. No. 2004-UP-257 (filed on May 5, 2004). The Remittitur was returned on June 8, 2004.

2004-CP-42-2553

The Applicant subsequently filed an application for post-conviction relief (PCR) on July 28, 2004. The State filed its Return on February 3, 2005. An evidentiary hearing was convened on March 24, 2006, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Michael D. Brown, Esquire. The Respondent was represented by Molly R. Crum of the South Carolina Attorney General's Office.

The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel, in that;
 - a. Counsel threatened Applicant with possibility of life without parole,
 - b. Counsel failed to interview alibi witnesses,
 - c. Counsel failed to share discovery with Applicant,
2. Newly discovered evidence.

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The Honorable J. Mark Hayes II denied and dismissed Applicant's application by written Order on May 03, 2006. The Applicant then filed a timely Notice of Appeal of the denial and dismissal of his application for PCR. Following the submission of a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), and Applicant's *pro se* brief, the Supreme Court of South Carolina denied the petition for Certiorari on November 15, 2007, and issued a Remittitur to the lower court on December 4, 2007.

2009-CP-42-1219

The Applicant subsequently filed a second application for post-conviction relief (PCR) on

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March 4, 2009. In that application, Applicant alleged that he was being held unlawfully in custody for the following reasons:

1. Ineffective Assistance of Counsel; and
2. Newly Discovered Evidence.

A Conditional Order of Dismissal was signed by the Honorable J. Mark Hayes II, and filed on July 27, 2009, dismissing the application as barred by the statute of limitations and as successive. Following the review of the record and Applicant's subsequent submission of objections to the Conditional Order, the Honorable J. Derham Cole denied and dismissed Applicant's application by Final Order on July 1, 2010. The Applicant did not appeal the denial of this application.

Applicant's Current PCR Application

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; and
2. Newly Discovered Evidence.
 - a. "[T]heir [sic] is new and compelling pertaining pertaining [sic] to the chain of evidence."

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections; Applicant's direct appeal records, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

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II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

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 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).

Statute of Limitations

This Court further finds 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 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

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SOUTH CAROLINA

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(s) he challenges in this application on March 7, 2003. Following his direct appeal, the Remittitur was returned on December 4, 2007. The Applicant was therefore required to file his application before December 4, 2008. This Application was filed on March 2, 2011, well after the one year 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 is summarily dismissed for failure to file within the time mandated by statute and because it is successive to his two previous applications.

Summary

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


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reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 20th day of August, 2013.



Roger L. Couch
Administrative Judge – Common Pleas
Seventh Judicial Circuit

Spartanburg, South Carolina

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Spartanburg County

Spartanburg County Court House
180 Magnolia Street
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Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

August 28, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Bonnie James Riser
Applicant # 218912

7TH JUDICIAL CIRCUIT

CASE # 2011-CP-42-1034

CERTIFICATE OF SERVICE

S. vs. Spivey
Respondent

I certify that, on this date, I served a copy of the
In this action dated 8-20 2013 on 8-27-13

Conditional Order of Dismissal

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ann Mueller
Shyree White
Bonnie Riser

8-28-13
(Date)

Christy Gray
(Signature)