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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Calvin Tyler, #258233,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-10-773

RECEIVED

FEB 12 2015

S.C. Supreme Court

Conditional Order of Dismissal

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SOUTH CAROLINA SUPREME COURT

This matter comes before this Court by way of an application for post-conviction relief filed September 21, 2010 and received by the S.C. Office of the Attorney General on December 7, 2012. The Respondent made its Return and Motion to Dismiss.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 1998 term of the Charleston County Grand Jury for murder (1998-GS-10-5476) and armed robbery (1998-GS-10-5477). D. Ashley Pennington, Esquire, represented the Applicant. On April 23, 1999, the Applicant pled guilty to the lesser included offenses of voluntary manslaughter and strong arm robbery. The Honorable J. Derham Cole sentenced the Applicant to confinement for thirty (30) years for voluntary manslaughter and ten (10) years suspended to five (5) years probation for strong arm robbery. The sentences are to run consecutively. The Applicant did not appeal his convictions or sentences.

Applicant subsequently filed an application for post-conviction relief (PCR) on March 27, 2000. In his application for PCR, the Applicant requested relief on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to inform of his right to impanel a jury to determine the propriety of a recommendation of mercy.
 - b. Counsel failed to inform the Applicant of the possibility of a jury finding him guilty of the lesser included offense of involuntary manslaughter.
 - c. Counsel failed to file an interlocutory appeal in regards to the applicant being waived as an adult.

The Applicant amended this application on June 26, 2001 to allege:

1. He never signed any statement as required by S.C. Code Ann. §8-14-50 and §19-1-90 (1976).

The Applicant amended his application for the second time on September 18, 2001 to allege:

1. Trial counsel was ineffective in that he failed to inform Calvin Tyler that by entering a guilty plea he is waiving his right to appeal the Family Court Order transferring him to General Sessions court for trial as an adult.

The Respondent made its Return on April 12, 2001. An evidentiary hearing into the matter was convened on September 26, 2001 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Bradley D. Churdar, Esquire. William Edgar Salter, III, Esquire, of the South Carolina Attorney General's Office represented the Respondent. By Order filed November 30, 2001, the Honorable R. Markley Dennis denied and dismissed this application with prejudice. By Order filed July 3, 2003. Judge Dennis denied the Applicant's "Pro Se Motion for Reconsideration and Motion to Relieve Counsel". The Applicant did not appeal this denial.

The Applicant filed his second application for post-conviction relief on May 7, 2002. In his application for PCR, the Applicant requested relief on the following grounds:



1. Subject Matter Jurisdiction
 - a. Only murder charge could be transferred to general sessions court.
2. Newly Discovered Evidence pursuant to §17-27-45(c)

The Respondent made its Return to Successive Application on January 10, 2003. An evidentiary hearing into the matter was convened on January 23, 2003. The Applicant chose to freely and voluntarily withdraw his application. By Order dated January 23, 2003, the Honorable Daniel F. Pieper dismissed the application and stated the claim of lack of subject matter jurisdiction was withdrawn without prejudice.

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

1. Subject Matter Jurisdiction.
 - a. Transfer jurisdiction statute 20-7-7605 (b) does not give the court of general sessions jurisdiction over charges.
 - b. Ct. violated Rule 11 of Federal Rules of Civil Procedure (e)(3); lacked jurisdiction to execute a sentence for charges of voluntary manslaughter and common law robbery.
2. Ineffective Assistance of PCR Counsel.
 - a. Failed to comply with South Carolina Supreme Court Rule 71.1(d) requiring counsel to raise all available grounds in a PCR proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

The Applicant alleges the Court of General Sessions lacked subject matter jurisdiction because the transfer jurisdiction statute S.C. § 20-7-7605(6) did not give the Court jurisdiction. This Court finds this allegation is wholly without merit and this application is summarily dismissed with prejudice. The record reflects the Applicant was arrested the murder and armed robbery for which he pled guilty at the age of fifteen. On April 30, 1998, he was waived up from

Family Court to the Court of General Sessions. At the time the Applicant was indicted, S.C. Code § 20-7-7605 (1996), governed the transfer of juvenile cases from Family Court to General Sessions Court.¹ The code section read as follows:

§ 20-7-7605. Transfer of jurisdiction.

In accordance with the jurisdiction granted to the family court pursuant to Sections 20-7-400, 20-7-410, and 20-7-420, jurisdiction over a case involving a child must be transferred or retained as follows:

- (1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction, or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this article. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.
- (2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.
- (3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.
- (4) If a child sixteen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

¹ S.C. Code § 20-7-7605 was enacted on July 1, 1996 and was replaced by S.C. Code § 63-19-1210 enacted June 16, 2008.



(5) If a child fourteen or fifteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this article. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 20-7-8510 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, assault and battery of a high and aggravated nature, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the

date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense. (emphasis added)

This Court finds, § 20-7-7605(5) controlled the transfer of the Applicant's charges from Family Court to General Sessions Court. The record reflects the Applicant was fifteen at the time of the incident and charged with murder and armed robbery. This Court finds the Applicant's age at the time of the murder put him under the purview of §§ 5 and 6. Also, murder and armed robbery both have maximum terms of imprisonment greater than fifteen years which subjects the Applicant to transfer pursuant to this statute.² The record reflects a waiver hearing was held within the Family Court on April 30, 1998 and the result of the hearing was the Applicant being waived up to be tried as an adult within the Court of General Sessions. (See Affidavit Attached to Arrest Warrant). This Court finds this allegation is wholly without merit and the Applicant's charges were properly transferred from Family Court to the Circuit Court giving the Court of General Sessions the jurisdiction to accept his plea of guilty. This Court find this allegation is summarily dismissed with prejudice.

The Applicant also alleges ineffective assistance of post-conviction relief counsel. This Court finds this allegation is without merit and is summarily dismissed with prejudice. The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (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 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a

² Murder carries a mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-3-20(A) (1976). Armed robbery carries a mandatory minimum term of not less than ten years to thirty years. S.C. Code Ann. §16-11-330 (1976).

successive PCR application under ' 17-27-90.' Aice, 305 S.C. at 451, 409 S.E.2d at 394. This Court finds this allegation is dismissed as being an improper basis for post-conviction relief.

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that the Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give reason for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

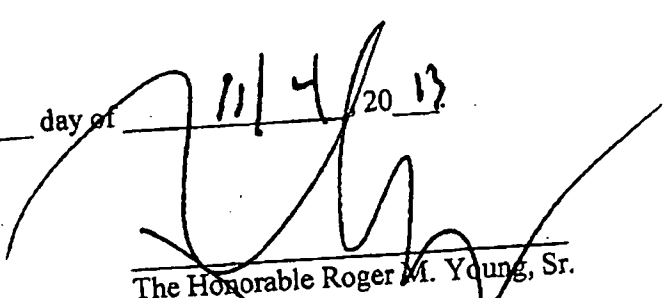
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Ashleigh Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this

day of

11/4/2013


The Honorable Roger M. Young, Sr.
Administrative Judge
9th Judicial Circuit


South Carolina



ALAN WILSON
ATTORNEY GENERAL

October 29, 2013

The Honorable Roger M. Young
Ninth Judicial Circuit
100 Broad Street
Charleston, SC 29401

RE: Calvin Tyler, #258233 v. State of South Carolina
2010-CP-10-7736

Dear Judge Young:

Enclosed please find the proposed original Conditional Order of Dismissal in the above-captioned case. If this Order meets with your approval, please sign same and forward to the County Clerk of Court to be filed and served.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh

Enclosure(s)
Rmtd
PCR App
SCDC Records

cc: Calvin Tyler, #258233