

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT

Alfonso Staton, #241380,

)
) C.A. No. 2013-CP-34-00089

)
) Applicant,

)
) **CONDITIONAL ORDER**
) **OF DISMISSAL**

v.)
)

State of South Carolina,)
)

)
) Respondent.
)
)
_____)

This matter comes before the court by way of an Application for Post-Conviction Relief filed April 26, 2013. The Court finds as follows:

I. PROCEEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Marlboro County Clerk of Court. The Marlboro County Grand Jury indicted the Applicant for kidnapping (1996-GS-34-0979, count 1), murder (1996-GS-34-0979, count 2), first degree criminal sexual conduct (1996-GS-34-0979, count 3), and criminal conspiracy (1996-GS-34-0979, count 4). He was represented by William B. Rogers, Jr., Esquire.

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After the State called the case to trial – the Applicant was tried jointly with five (5) co-defendants – the Applicant was found guilty of kidnapping, murder, and criminal conspiracy. On March 18, 1997, the Applicant was sentenced by the Honorable Edward B. Cottingham to life imprisonment for murder and a concurrent five (5) year sentence for criminal conspiracy.¹

¹ Applicant was not sentenced on the kidnapping conviction provision pursuant to S.C. Code Ann. § 16-3-910.

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May 8, 2008. On February 23, 2009, the Supreme Court dismissed the writ as improvidently granted. The remittitur was returned to the circuit court on March 11, 2009.

II. CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of 29(b) counsel"
 - a. "Mr. Grove the 29(b) counsel did not properly research of brief my issues. He did not notify me immediately when 29(b) motion was denied, and he did not file an appeal of the dismissing of 29(b)."

Applicant seeks relief in the form of a "[n]ew trial and belated appeal of 29(b)[.]" Respondent made a Return and Motion to Dismiss the Application on May 20, 2013. Respondent asked this Court to dismiss the application as successive, untimely, and failing to state a cognizable claim.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) 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." 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 in ruling on Respondent's motion to dismiss:

A. Failure to State a Claim

The Court finds that this application should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based on the following grounds:

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- “(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....”

S.C. Code Ann. § 17-27-20(a). Applicant’s allegations center on the performance of his appointed counsel at his Rule 29(b), SCRCrimP, motion for a new trial based on after discovered evidence. The Sixth Amendment only guarantees effective assistance of counsel at critical stages of a prosecution. State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995). However, a post-trial motion is not a critical stage of criminal proceedings. Id. Because the Constitution does not guarantee Applicant effective assistance of counsel for his Rule 29(b) hearing, he has not demonstrated “[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State[.]” S.C. Code Ann. § 17-27-20(a)(1). Therefore, the Court finds that summary dismissal is appropriate.

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B. Failure to Timely File

The Court further finds that this application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

“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

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sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.”

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in this application on March 18, 1997. Applicant was therefore required to file his application before March 18, 1998. This application was filed on April 26, 2013, which was well beyond expiration of the statutory filing period.

It further appears from the records that Applicant’s Rule 29(b) motion was ruled on in October 2011.² Assuming Applicant had a viable PCR claim, he would have been required to file this application in October of 2012. This application was filed in April, 2013, more than five months later. Therefore, the Court finds that summary dismissal is appropriate.

C. Successive Application

The Court finds that this application should be dismissed because it is successive to Applicant’s previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

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.

² Applicant’s SCDC records indicate he was transported to Marlboro County for a court appearance on October 6, 2011. In Question 13 of his application, Applicant lists the date of the denial of his Rule 29(b) motion as October 19, 2011

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Under this statute, successive post-conviction relief applications are forbidden unless 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 grounds raised in a subsequent application are limited to those that "could not have been raised . . . in the previous application." Id. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant has failed to present any reasons why the current allegations could not have been alleged in his previous application. Therefore, the Court finds that summary dismissal is appropriate.

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IV. CONCLUSION

The Court finds that the record before the Court creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

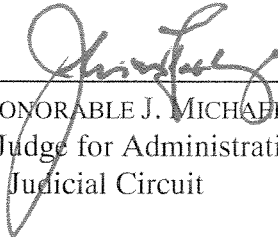
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order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

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Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

IT IS SO ORDERED.



THE HONORABLE J. MICHAEL BAXLEY
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

10/11, 2013
Hartsville, South Carolina

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