

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Albert William Anders,)
S.C.D.C. No. 131939,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2014-CP-23-2209

FILED-OLENTINE COURT
GREENVILLE CO. S.C.
PAUL D. WICKENBACHER
2014 DEC 23 PM 10 39

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 16, 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 Greenville County. The Applicant was indicted at the January 1986 term of the Greenville County Grand Jury for murder (1986-GS-23-71). He was represented by James R. Mann, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On March 3, 1986, the Honorable William B. Traxler, Jr. sentenced the Applicant to life imprisonment.

A notice of appeal was filed at the South Carolina Supreme Court. The Supreme Court affirmed the Applicant's conviction and sentence. State v. Anders, Op. No. 87-MO-224 (S.C. Sup. Ct. filed Apr. 27, 1987).

1987-CP-23-2937

The Applicant filed a PCR application on June 23, 1987 (1987-CP-23-2937). The Applicant raised the following issues:

1. Insufficiency of the evidence to support a conviction for murder.
2. Ineffective assistance of counsel in that Applicant's trial attorney rendered inadequate legal representation at trial when he:
 - a. Failed to call "key" witnesses to testify;
 - b. Failed to "talk with [Applicant] concerning . . . direct appeal and the exception";
 - c. "Failed to investigate the mental state of [Applicant] . . . because of the deadly affect of Toddy Oil that [Applicant] and victim were intoxicated on at the time of the crime."

The Applicant submitted an affidavit indicating he wished to withdraw this PCR application. The Honorable Luke N. Brown, Jr., issued a consent order filed July 20, 1989, in which he dismissed the PCR application with prejudice.

1996-CP-23-0695

The Applicant filed a PCR application on March 22, 1996 (1996-CP-23-0695). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Insufficient evidence to support conviction.
4. Ineffective assistance of PCR counsel.

An evidentiary hearing was convened on January 20, 1998 at the Greenville County Courthouse. Russell Ghent, Esquire represented the Applicant. The Honorable Jackson V. Gregory denied and dismissed the PCR application by order dated March 8, 1998.

2004-CP-23-3808

The Applicant filed a PCR application on June 11, 2004 (2004-CP-23-3808). The Applicant raised the following issues:

1. Violation of Ex Post Facto clause – “Application of the Omnibus Criminal Justice Improvement Act of 1986 was more onerous than the provision of the previous 1981 Act. The 1986 Act, as applied to the applicant, was an ex post facto application of law.”

The Honorable Larry R. Patterson issued a conditional order of dismissal filed October 11, 2004, in which the Applicant was given 30 days to show why the dismissal should not become final. The Applicant failed to respond to the conditional order of dismissal. The Honorable Edward W. Miller issued a final order of dismissal filed February 2, 2005.

II.

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

1. Newly discovered evidence.
 - a. “Witnesses/victim was aggressor.”

III.

This Court finds this matter should be summarily dismissed because the Applicant has 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 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 Applicant was convicted of the offense he challenges in this application on March 3, 1986 and the South Carolina Supreme Court affirmed his conviction and sentence on April 27, 1987. This application was filed on April 16, 2014, which was several 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 applications 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 applications, the application is dismissed.

V.

This Court notes the Applicant has made an allegation of newly-discovered evidence. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). This Court finds the Applicant has failed to articulate the exact nature of the “new evidence” and has not attached any documentation of such to the PCR application. As such, the Applicant cannot sustain his claim of newly-discovered evidence and this allegation 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 Greenville 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 8 day of Dec., 2014.



Letitia H. Verdin
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville South Carolina.