

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

**ORDER TO RESTRICT
FUTURE FILINGS**

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 JUN 12 PM 2 39

This Court finds the Applicant's repetitive and abusive filings should be restricted in order to preserve the Court's time and resources and stop interference with the fair administration of justice.

An applicant is entitled to a full adjudication on the merits of the post-conviction relief (PCR) application – provided it is timely filed and raises cognizable issues under the Uniform Post-Conviction Procedure Act. A PCR applicant is given “one bite at the apple” in the PCR setting, and the PCR evidentiary hearing is the venue for all evidence and arguments to be made to the court. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”); see also Graham v. State, 661 S.E.2d 337, 338, 378 S.C. 1, 3 (2008) (“Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than one bite at the apple as it were.”) (internal quotation omitted).

This is the Applicant's fourth PCR application challenging his March 3, 1986 conviction and sentence. This new PCR application was filed on April 16, 2014.

I.

The Applicant's extensive history of filing collateral attacks against his March 3, 1986 conviction and sentence is necessary to understand and support this Court's decision to restrict any future filings:

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.

Current Application

The Applicant’s current PCR application was filed on April 16, 2014. The Applicant raises the following issue:

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

This Court notes the Applicant failed to meet his burden of proving this issue, however, as he did not articulate the exact nature of the “new evidence” and did not attach any documentation of such to the PCR application.

II.

This Court finds the Applicant has continued to file PCR actions setting forth meritless grounds in each application. Therefore, this Court will impose a restriction on the Applicant’s ability to continue to waste valuable judicial and government resources by filing repeated attempts to

challenge his convictions through a series of meritless claims. The United States Supreme Court has – for example – denied litigants who have filed repetitive, frivolous petitions the right to proceed in forma pauperis, resulting in these litigants having to pay the required filing fee with that Court. See, e.g., In re Whitaker, 513 U.S. 1, 115 S. Ct. 2 (1994); In re Anderson, 511 U.S. 364, 114 S. Ct. 1606 (1994); In re Demos, 500 U.S. 16, 111 S. Ct. 1569 (1991); In re Sindram, 498 U.S. 177, 111 S. Ct. 596 (1991); In re McDonald, 489 U.S. 180, 109 S. Ct. 993 (1989).

This Court orders that the Applicant is required to provide a notarized affidavit certifying that he believes in good faith the matter raised is not frivolous. In the case of In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton – who had filed numerous meritless petitions with the Court – to pay a filing fee and accompany any future filings with a properly notarized affidavit certifying that he, in good faith, believed the matters raised were non-frivolous and proper for the Court to consider. Id. Other courts have required an abusive litigant to file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. See Feathers v. Chevron, U.S.A., Inc., 141 F.3d 264 (6th Cir. 1998); United States ex rel. Verdone v. Circuit Court for Taylor County, 73 F.3d 669 (7th Cir. 1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir. 1990); Green v. Warden, 699 F.3d 364 (7th Cir. 1983).

This Court orders that if the Applicant submits a PCR application accompanied with a notarized affidavit, that the Clerk's office be directed to submit the application to the Chief Administrative Judge before filing. The Administrative Judge will then make a finding as to whether the issues raised in the application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the application proper, it would then be submitted to the Clerk's

office for filing.

This Court also warns the Applicant that, should he continue to file PCR applications containing frivolous issues, he may be held in contempt or sanctioned as a consequence for such conduct. The South Carolina Supreme Court imposed such a warning in Maxton. See Maxton, 325 S.C. at 5, 478 S.E.2d at 680.

III.

This Court finds the Applicant continues to waste the time and resources of the Greenville County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Thirteenth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of the Greenville County Bar, court personnel, and the South Carolina Supreme Court.

This Court notes there must be finality to the litigation process. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice."). The South Carolina Supreme Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. . . . This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts

buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120, 123 (1978) (quoting Mackey v. United States, 401 U.S. 667, 691, 91 S. Ct. 1160, 1179 (1971) (Harlan, J., concurring)).

IV.

IT IS THEREFORE ORDERED THAT:

1. The Greenville Clerk of Court **must** refuse to accept further petitions from the Applicant asking the Court to entertain matters unless he pays the filing fee generally required for filing motions and petitions.
2. The Applicant **must** be prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees¹ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous.
3. Any PCR applications submitted with properly notarized affidavits must be submitted to the Chief Administrative Judge to make a finding as to whether the allegations are non-frivolous and proper for the Court **before they are filed by the Clerk of Court.**
4. The Clerk of Court **must** return all documents to the Applicant that do not comply with this order.
5. The Applicant **may** be held in contempt or sanctioned if he files Applications containing matter that is frivolous or improper for the Court to consider.

AND IT IS SO ORDERED this 7 day of Jan., 2015.



Letitia H. Verdin
Presiding Judge
Thirteenth Judicial Circuit

¹ S.C. Code Ann. § 8-21-310(11)(a) (Supp. 2004).

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2302209

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
JAN 12 PM 2 39

Albert William Anders vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Rule 12(b), SCRPC; Rule 41(a),
 Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Rule 40(j) SCRPC; Bankruptcy;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Albert William Anders 131939 McCormick
Correctional Institute 386 Redemption Way
McCormick, SC 29899

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court