

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Maurice Graves, #208580,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-735

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

CONDITIONAL ORDER
OF DISMISSAL

RECORDED
2014 JUL 18 PM 1:11
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief filed April 14, 2014. In its Return, Respondent requests that the action be summarily dismissed.

PROCEDURAL HISTORY

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. In his present application, Applicant challenges two 1993 convictions.¹ Applicant was indicted for (1) Murder and (2) Robbery (1993-GS-43-0875). Jordan White, Esquire, represented him. On December 13, 1993, Applicant pled guilty to Voluntary Manslaughter and Strong Arm Robbery. He was sentenced by the Honorable David F. McInnis to twenty (20) years imprisonment. Applicant did not appeal his conviction and sentence.

Applicant filed an initial application for post-conviction relief on March 23, 1994 (C.A. No. #). Applicant alleged the following grounds:

1. Ineffective Assistance of Counsel

¹ Applicant is now serving a life sentence for Burglary – First Degree (2003-GS-43-0159). He has not challenged that conviction in this application.

- a. Counsel was ineffective for advising him to plead guilty to the charge of manslaughter where the evidence introduced to the courts clearly showed that he was innocent of such crime.
2. "I pled guilty unknowingly, unwillingly, and involuntarily."
 - a. "Applicant contends that he did not understand what he was doing by pleading guilty to the charge of manslaughter and that he never planned to do so but because of his attorney advising him to plead to the charge he did only because he was told that he would get a life sentence if he did not plead guilty."
3. "Violation of Constitutional Rights."
 - a. "The violation of the appellants constitutional rights are clear in that he was denied adequate and sufficient counsel at trial, Due-Process and equal protection of the law and prays that this court will grant him the relief he seeks."

The State filed its Return on May 5, 1994. An evidentiary hearing was convened on August 28, 1994, at the Sumter County Courthouse, at which the Applicant was present and represented by David Holler, Esquire. The Honorable Thomas W. Cooper, Jr., denied and dismissed Applicant's application by written Order on October 16, 1995.

Applicant filed an application for post-conviction relief (PCR) on March 16, 2000 (2000-CP-43-0186). Applicant alleged the following grounds:

1. "Trial and post-conviction attorney were ineffective assistance of counsel for not appealing, and investing the case."
 - a. "12-13-93, Trial Attorney Jordan White didn't advise I, Maurice Graves, of the Right to appeal. Post-Conviction attorney David C. Holler didn't appeal Judge Thomas W. Cooper Jr. Decision after reviewing new evidence, and with the judge stating, "trial counsel didn't do sufficient preparation to go to trial."
2. "I pled guilty unknowingly, unwillingly, and involuntarily."
 - a. "Knowing the facts and evidence that I could have, if trial lawyer investigated and told me. I wouldn't never plead guilty of such charges."

In a Return and Motion to Dismiss dated November 8, 2001, Respondent moved for summary dismissal based on the one-year statute of limitations. The matter was called for a

hearing on November 27, 2001, and Applicant withdrew his application. A written Order of Dismissal with Prejudice was signed by the Honorable Howard P. King on January 14, 2002.

Applicant filed his third application for post-conviction relief on May 21, 2010 (2010-CP-43-1088). Applicant alleged the following grounds:

1. PCR Counsel failed to appeal the withdrawal of his guilty plea.

In a Return and Motion to Dismiss dated April 21, 2010, Respondent moved for the summary dismissal of the application based on the fact that the application was filed beyond the one-year statute of limitations, was successive to Applicant's prior PCR applications, and was barred by the doctrine of laches; Respondent also moved for summary dismissal on the basis that an Applicant may not appeal the withdrawal of his PCR application. A written Order of Dismissal with Prejudice was signed by the Honorable W. Jeffrey Young on August 4, 2011. An Amended Order of Dismissal was signed by the Honorable W. Jeffrey Young August 30, 2011.

Applicant filed a timely notice of appeal. By order dated February 8, 2012, the South Carolina Supreme Court dismissed Applicant's appeal. The Remittitur was issued on February 24, 2012. Applicant filed a petition for rehearing on February 24, 2012. By Order dated April 26, 2012, the South Carolina Supreme Court denied and dismissed Applicant's motion for rehearing.

Applicant then filed a Petition for Habeas Corpus on February 5, 2014, in federal district court. Applicant raised the following issues:

Ground One: Petitioner Fifth and Fourteenth Amendment of the United States Constitution were violated due to petitioner not receiving a revocation hearing after petitioner was served with a arrest warrant violating his parole from petitioner '1993" conviction.

Ground Two: Actual Innocence

Ground Three: Petitioner's Fourth Amendment Right of the United States Constitution was violated due to the fact that the magistrate judge

created the affidavit for the arrest warrant for murder, and forged the affiant's signature.

Ground Four: Prosecutor Misconduct

Ground Five: Petitioner's Sixth and Fourteenth Amendment of the United States Constitution were violated by petitioner's 1st PCR counsel failures to file a notice of appeal following petitioner's "1995" PCR hearing.

Ground Six: Trial Counsel was ineffective for failing to interview key eye witnesses to prove petitioner innocence, all in which violated petitioner Sixth Amendment Right to the United States Constitution

Ground Seven: Trial Counsel was ineffective for failing to object to a invalid arrest warrant when the magistrate clearly wrote the affidavit, all in which violated petitioners Sixth Ament Right of the United States Constitution.

Ground Eight: Trial counsel was ineffective for failing to do any pre trial investigation including: consulting with petitioner, failure to examine autopsy report, and failure to review the scene of the crime, all in which violated Petitioner's Sixth Amendment Right of the United States Constitution.

Ground Nine: Amended claim: Trial Counsel was ineffective for allowing petitioner to plead guilty to a charge that wasn't[sic] a lesser included offense of the charge, all in which violated petitioner's Fifth, Sixth, and Fourteenth Amendment of the United States Constitution.

Ground Ten: Amended claim: Trial Counsel was ineffective for failing to disclose any evidence to Petitioner's case that petitioner did no crime at all, in which violated petitioner's Fifth, Sixth, and Fourteenth Amendment of the United States Constitution.

Ground Eleven: Amended claim: Trial Counsel was ineffective for failing to file a notice of appeal following petitioner conviction, after petitioner advised counsel to do so, all in which violated petitioner, Fifth, Sixth, and Fourteenth Amendment of the United States Constitution.

The State filed its return and memorandum of law in support of motion for summary judgment on June 10, 2014. The action is still currently pending.

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Trial Counsel was ineffective for failing to disclose any evidence to applicant's case that applicant did no crime at all, in which the only eye witness and forensic testing proves, all in which violated petitioner's Fifth, Sixth, and Fourteenth Amendment of the South Carolina and United States' Constitution."
2. Subject matter jurisdiction.
3. Newly Discovered evidence under S.C. Code. Ann. § 17-27-45(C)
 - a. "Applicant claims that he is raising this ineffective assistance of counsel claim under the scope of S.C. Code Ann. § 17-27-45(C)...pointing out the eye witness Franklin White and Forensic Evidence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court 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. S.C. 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 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 pled guilty to the offense(s) he challenges in this Application on December 13, 1993. Therefore, the Applicant had to file his application by December 14, 1994. This Application was filed April 14, 2014, which was well after the 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) (1985) 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."

Additionally, this Court finds that the application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. 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. Land,

274 S.C. 243, 262 S.E.2d 735 (1980). In regards to the allegations set forth in Applicant's PCR application, these are the same allegations raised by Applicant in a previous PCR application and therefore, by very definition, are successive in nature.

This Court finds the doctrine of *res judicata* bars the Applicant's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel and subject matter jurisdiction in both the state and federal courts. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, this Court summarily dismisses these claims as barred by *res judicata*.

Furthermore, this Court finds that Applicant's claims of newly or after discovered evidence must be dismissed, as Applicant has failed to set forth any specific allegations of the nature of the evidence. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

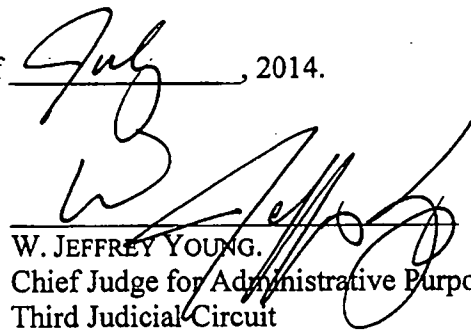
- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. Therefore, this Court finds that this allegation, and this application, must be dismissed.

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, factual or legal, with the Sumter County Clerk of Court and shall serve opposing counsel at the following address:

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

AND IT IS SO ORDERED this 11 day of July, 2014.


W. JEFFREY YOUNG.
Chief Judge for Administrative Purposes
Third Judicial Circuit

Sumter, South Carolina.

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Maurice #208580 Graves Lee Correctional Inst/Richland
#208 990 Wisacky Hwy Bishopville, SC 29010

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
