

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Richard A. Crawford, #267022, )  
Applicant, )

Case No. 2014-CP-26-595

v. )

**CONDITIONAL ORDER  
OF DISMISSAL**

State of South Carolina, )  
Respondent. )

HORRY COUNTY  
2015 JAN -6 PM 1:02  
MEL ANNE HARRIS-WARD  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 31, 2014. The Court finds as follows:

**I. PROCEDURAL HISTORY**

**A. Underlying Conviction**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In September 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-3557). William Edward Chrisco, Esquire, represented Applicant. On September 8, 2009, Applicant pled guilty to the lesser included offense of voluntary manslaughter. On September 15, 2009, the Honorable Edward B. Cottingham sentenced Applicant to thirty (30) years imprisonment. Applicant did not appeal his guilty plea or sentence.

**B. First Post-Conviction Relief Action (2010-CP-26-1571)**

Applicant filed his first application for post-conviction relief on February 24, 2010. In that application, Applicant raised the following grounds for relief:

1. Ineffective assistance of counsel.
2. Bias and prejudice by the plea judge.
3. Coercive Plea Bargain

The Court convened a hearing on the application on August 25, 2010. Paul Archer represented Applicant at the evidentiary hearing. The Court denied the application by written order dated October 12, 2010. Applicant filed a timely notice of appeal, and Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of a Johnson<sup>1</sup> petition for writ of certiorari. The South Carolina Supreme Court denied the petition on May 23, 2012. The remittitur was returned to the circuit court on June 12, 2012.

**C. Second Post-Conviction Relief Action (2012-CP-26-7358)**

Applicant filed a second application for post-conviction relief on September 25, 2012. In that application, Applicant failed to state any grounds for relief. The Honorable Steven H. John issued a Conditional Order of Dismissal on December 19, 2012. Applicant failed to respond to the conditional order. The Honorable Benjamin H. Culbertson issued a Final order of Dismissal on March 7, 2013. Applicant did not appeal the denial of his second application for post-conviction relief.

**D. Federal Habeas Corpus (2:12-cv-2795-RMG)**

Applicant also filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. On August 6, 2013, the Honorable Richard M. Gergel granted summary judgment against Applicant and dismissed the petition. The United States Court of Appeals for the Fourth Circuit dismissed Applicant's appeal of the grant of

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E. 201 (1988).

summary judgment on March 13, 2014. The mandate was returned to the District Court on April 4, 2014.

## **II. CURRENT APPLICATION**

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

1. "After Discovered evidence pursuant to 17-27-20"
2. "Ineffective Assistance of trial counsel"
3. "Procedural Default, pursuant to Martinez v. Ryan 132 S.Ct. 1309"

In an attachment to his application, Applicant asserts 1) he has an affidavit from an investigator that constitutes after discovered evidence; 2) plea counsel failed to investigate; and 3) initial collateral counsel failed to raise certain claims.

On September 25, 2014, Applicant filed a "Motion to Amend the Application for Post Conviction Relief and Motion to Motion Therefor." In this document, Applicant asserts he is pursuing relief "under specific provision of S.C. Code of Law 17-27-45(c) and McCoy v.s. State[.]"

Respondent made a timely Return and Motion to Dismiss on or about December 12, 2014, asking this Court to dismiss the application as untimely, successive, and failing to state a claim upon which relief can be granted.

## **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 Timely File**

The Court finds 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 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, 470, 469 S.E.2d 606, 607 (1996).

Applicant was sentenced on the offenses he challenges in this application on September 15, 2009. Applicant was therefore required to file his application before September 15, 2010. This application was filed on January 31, 2014, which was well beyond the expiration of the statutory filing period. Furthermore, Applicant fails to set forth with any specificity his claim that S.C. Code Ann. § 17-27-45(c) excuses his failure to comply with the one year statute of limitations. See Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.” (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))). Therefore, the Court finds summary dismissal is appropriate.

### **B. Successiveness**

The Court further finds this application should be dismissed because it is successive to Applicant's previous collateral actions. 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.

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. 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.

Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications and his federal habeas corpus petition. In fact, his allegations against plea counsel and prior collateral counsel appear to have been raised in these previous actions. His mere recitation of S.C. Code Ann. § 17-27-

45(c) does not relieve him of his burden of presenting some evidence he is entitled to relief. Welch, 246 S.C. at 260, 143 S.E.2d at 456 (citations omitted). Applicant failed to present any reasons why this application is not successive. Therefore, the Court finds summary dismissal is appropriate.

### **C. Failure to State a Claim**

The Court further finds this application should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to state a claim of newly discovered evidence. To disavow a knowing and voluntary guilty plea based on newly discovered evidence, the applicant must show “that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the ‘interest of justice’ requires the applicant’s guilty plea to be vacated.” Jamison v. State, Op. No. 27454 (S.C. Sup. Ct. filed Oct. 22, 2014 (Shearouse Adv. Sh. No. 42 at 12), 2014 WL 5358729, at \*7. Applicant has failed to present any evidence regarding either prong of this test.

Applicant alleges he “was provided with an affidavit by David B. MacDonald, South Carolina Private investigator [...] on 2-26-13.” However, he failed to provide a copy of this affidavit with his application. He also failed to provide any specificity as to how the affidavit contains information not available at the time of the plea or to provide any specificity as to why the ends of justice would be served by setting aside his plea based on the affidavit. Thus, he has not provided any evidence he can satisfy either element of a newly discovered evidence

claim. Welch, 246 S.C. at 260, 143 S.E.2d at 456 (citations omitted). Therefore, the Court finds summary dismissal is appropriate.

#### IV. CONCLUSION

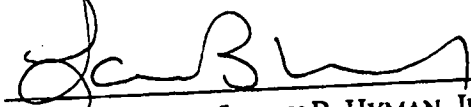
The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

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 <sup>JAN</sup> (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

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

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court within twenty <sup>JAN</sup> (30) days, and his failure to timely file and serve this response will result in the Court not considering his response.

IT IS SO ORDERED THIS 17 DAY OF DEC, 2014.

  
THE HONORABLE LARRY B. HYMAN, JR.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

Coway, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Atonia Jacobs (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA ) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF Richland ) 2014-CP-26-595

On this 22 day of January, 2015, I served the signed Conditional Order of Dismissal on Inmate Richard A. Crawford #267022, by delivering personally and leaving a copy of the same at Broad River Correctional Institution, Columbia, South Carolina Deponent is not a party to this action.

s/ Atonia Jacobs  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 22 day of January, 2015  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires 6/10/2018

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Broad River Correctional Institution, Columbia, Richland County, South Carolina, this 22 day of January, 2015.

s/ Richard Crawford  
Inmate Signature  
SCDC No. 267022