

- d. Counsel inadequately cross-examined the State's witness
 - e. Counsel failed to argue the fingerprints found on the checks inside the burglarized residence could have resulted from a previous burglary at the same residence.
 - f. Counsel failed to note discrepancies in paint samples taken from vehicles.
 - g. Counsel failed to impeach witness Harold Lindenberg.
 - h. Counsel failed to argue the murder victim died from codeine ingestion rather than gunshot wound.
 - i. Counsel failed to call the murder victim's daughter as a witness.
 - j. Counsel failed to interview Sonya Green or Joyce Shelton.
 - k. Counsel failed to object when the Solicitor argued the Cadillac was the Applicant's vehicle.
2. Denial of due process of law.

An evidentiary hearing was convened on April 28, 2000 at the Charleston County Courthouse. By Order dated August 4, 2000, the Honorable A. Victor Rawl denied and dismissed the application for post-conviction relief with prejudice.

The Applicant filed a timely Notice of Appeal to the Supreme Court. The South Carolina Supreme Court denied the Petition for Writ of Certiorari by written Order dated December 13, 2001. The Remittitur was sent December 31, 2001.

The Applicant filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on May 14, 2002. In this Petition he raised the following grounds for relief:

1. Post-conviction relief court erred in finding the Petitioner's trial attorneys were not ineffective in failing to file a notice of appeal on behalf of the Petitioner.
2. Trial court lacked subject matter jurisdiction of the murder charge.
3. Post-conviction relief court erred in finding the Petitioner's trial attorneys were not ineffective in failing to introduce evidence that the paint samples taken from the Cadillac did not match the white paint removed from the victim's truck.
4. Post-conviction relief court erred in not finding counsel ineffective based on failure to move for a directed verdict as to burglary.
5. Post-conviction relief court erred in not finding counsel ineffective for their failure to object and seek a curative instruction with respect to numerous prejudicial arguments by the prosecutor.



By Order dated May 16, 2003, the Honorable G. Ross Anderson, Jr. granted the State's motion for summary judgment and dismissed his petition. The Applicant filed a Motion to Alter and Amend which was denied by the Order dated June 3, 2003.

The Applicant filed his second PCR application on April 15, 2004. The Applicant amended his application on December 16, 2004. In his second application for post-conviction relief, the Applicant raised the following grounds for relief:

1. Trial Court lacked subject matter jurisdiction to enter a conviction or impose a sentence for murder and burglary- first degree.
2. Ineffective assistance of trial counsel.
 - a. Counsel failed to object to the defective indictment prior to the swearing of the jury.

A hearing was convened on March 16, 2005. By Order dated August 12, 2005, the Honorable Daniel F. Piper denied and dismissed the application with prejudice.

The Applicant filed a timely Notice of Appeal on the denial of his application. Following the filing of a Johnson Petition, the South Carolina Supreme Court denied the Petition for Writ of Certiorari by written Order dated September 10, 2007. The Remittitur was sent September 26, 2007.

The Applicant filed a Writ for Habeas Corpus in the circuit court on March 15, 2010.

The Applicant raised the following grounds for relief:

1. Trial attorneys were ineffective for failing to file a notice of appeal on behalf of Petitioner.
2. Mr. Deluca was ineffective for failing to interview Officer Mason or subpoena him to court.
3. Counsel was ineffective for failing to object to Agent Crimminger's testimony on the ground that it was "hearsay".
4. Counsel was ineffective for failing to move for a directed verdict for the charge of burglary.
5. Attorneys were ineffective for failing to object to Solicitor Badger's bolstering of prosecution witnesses, attorney were also ineffective for failing to make a motion for a mistrial.

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6. Counsel failed to object to the judge's faulty charge to reasonable doubt, failed to request a curative charge to the jury, and failed to preserve the issue for appellate review.

The Petition was conditionally dismissed by the Honorable R. Markley Dennis by Order dated August 17, 2010. The Conditional Order of Dismissal became final by Order dated November 3, 2010.

II.

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

1. "The Applicant is requesting that this Honorable Court grant him a belated appeal in light of his trial attorneys being ineffective for failing to file a notice of appeal on behalf of the Applicant at the conclusion of trial."

In consideration of this matter, the Court has reviewed the records of the Berkeley County Clerk of Court regarding the subject convictions, the Applicant's prior PCR applications and habeas petitions, prior Orders of Dismissal, and appellate documents.

II.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.



Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegation was raised in his prior PCR, Federal Habeas Petition, and State Habeas Petition, thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, 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 was convicted of the offenses he challenges in this Application on February 5, 1997. This Application was filed on April 20, 2012, 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) (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 the moving party is entitled to judgment as a matter of law."

While allegations of the denial of a defendant's right to a direct appeal do not have to be filed within the one year statute of limitations, this Court finds summary dismissal is proper for filing outside of the statute of limitations when the failure to file an appeal allegation was addressed in a previous application or raised for the first time in a successive application. Graham v. State, 378 S.C. 1, 3-4, 661 S.E.2d 337, 338 (2008). Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

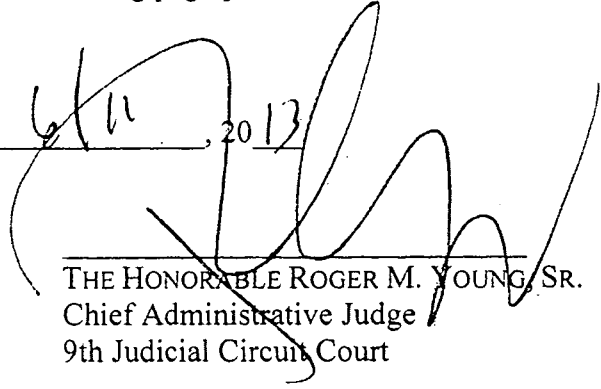
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this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

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

A handwritten signature in black ink, appearing to be the initials 'PW' or similar, located at the bottom right of the page.

[Signature on the following page.]

AND IT IS SO ORDERED this ____ day of 6/11, 2013



THE HONORABLE ROGER M. YOUNG, SR.
Chief Administrative Judge
9th Judicial Circuit Court

Chaffin, South Carolina