STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) 2014-CP-23-3759
COUNTY OF GREENVILLE)
)
Ronnie Harris,)
S.C.D.C. No. 294716,)
)
Applicant,)
) **CONDITIONAL ORDER OF DISMISSAL**
v.)
)
State of South Carolina,)
)
Respondent.)
)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 23 AM 10 42

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 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 October 2001 term of the Greenville County Grand Jury for first-degree criminal sexual conduct (CSC) with a minor (2001-GS-23-7069) and at the April 2003 term of General Sessions for lewd act upon a child (2003-GS-23-2960). He was represented by Daniel J. Farnsworth, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 15, 2003, the Applicant was sentenced by the Honorable C. Victor Pyle, Jr. to concurrent terms of 20 years for first-degree CSC with a minor and 15 years for lewd act upon a child.

A notice of appeal was filed at the South Carolina Court of Appeals. Aileen P. Clare,

Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense filed an Initial Brief pursuant to Anders v. California.[1] The Applicant, however, submitted an affidavit indicating he wished to "drop the appeal formerly filed on [his] behalf." The Court dismissed the appeal by order dated April 15, 2004.

2004-CP-23-4417

The Applicant filed a PCR application on July 2, 2004 (2004-CP-23-4417). The Applicant raised the following issue:

1. Ineffective assistance of counsel:
    a. Failure to object to several instances of hearsay testimony

An evidentiary hearing was convened on February 16, 2005 at the Greenville County Courthouse. Caroline Horlbeck, Esquire represented the Applicant. The Honorable John C. Few denied and dismissed the PCR application by order dated August 12, 2006.

The Applicant filed a notice of appeal. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The South Carolina Supreme Court granted the Applicant's petition for writ of certiorari and both parties submitted briefs. On February 9, 2009, the Supreme Court dismissed the writ of certiorari as improperly granted. The remittitur was issued on February 25, 2009.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (3:09-948-HFF-JRM). The Respondent submitted a motion for summary judgment on July 6, 2009. The Honorable Joseph R. McCrorey, United States

[1] 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated October 7, 2009. On October 21, 2009, the Honorable Henry F. Floyd, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed March 5, 2010, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

2010-CP-23-8273

The Applicant filed a PCR application on October 5, 2010 (2010-CP-23-8273). The Applicant raised the following issues:

1. The claim of ineffective assistance of counsel was inadequately raised at the first PCR hearing.
2. The first PCR hearing (and final order from that hearing) were a blatant miscarriage of justice that denied the Applicant his due process and equal protection rights.
3. Newly-discovered evidence:
    a. The court order compelling the Applicant to give fluid samples violated the United States Constitution, the South Carolina Constitution, the South Carolina statutes, and United States Supreme Court precedent.
    b. Trial counsel failed to establish a complete chain of custody regarding the blood and DNA evidence.

The Respondent filed a return and motion to dismiss. The Honorable Robin B. Stilwell issued a conditional order of dismissal – filed February 28, 2011 – that provided the Applicant 20 days to show why the order should not become final. Though the Applicant submitted a response to the Court, Judge Stilwell issued a final order of dismissal filed on April 29, 2011.

The Applicant filed a timely notice of appeal. The South Carolina Supreme Court required the Applicant – pursuant to Rule 243(c), SCACR – to show an arguable reason why the

denial of his application was improper. In an order of dismissal dated July 5, 2011, the Supreme Court found the Applicant failed to meet his burden in this regard. The remittitur was sent on July 21, 2011.

II.

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

1. "[T]he DNA Test Results in his case are inaccurate and Inconclusive as to the alleged 'DNA Mixture,' that was found on two cut pieces of bedsheets, because the State Law Enforcement Division (SLED), never identified what the alleged discharge or bodily fluids was in accordance with SLED policies and procedures."

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 offenses he challenges in this application on July 15, 2003 and the South Carolina Supreme Court granted his wish to voluntarily dismiss his appeal on April 15, 2004. The Applicant was therefore required to file his application before April 15, 2005. This application was filed on July 8, 2014, which was more than 9 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.

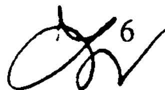
As the Applicant argues his issue is pursuant to S.C. Code Ann. § 17-27-45(c), this Court clarifies that he is alleging newly- or after-discovered evidence. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must 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 not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. This Court finds this issues must be 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 10 day of Dec., 2014.

Letitia H. Verdin
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.