

THE STATE OF SOUTH CAROLINA.
IN THE SUPREME COURT.

APPEAL FROM CHARLESTON COUNTY.
COURT OF COMMON PLEAS.

R. MARKLEY DENNIS, JR.

CASE NO: 2012-CP-10-1320.

RECEIVED

JUL 06 2015

S.C. SUPREME COURT

ANTHONY A HEYWARD. 279106.

APPELLANT.

v

STATE OF SOUTH CAROLINA.

RESPONDANT.

NOTICE OF APPEAL.

ANTHONY A HEYWARD 279106. APPEALS THE FINAL ORDER OF DISMISSAL OF THE HONORABLE R. MARKLEY DENNIS JR. DATED MAY 20 2015. APPELLANT RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER ON JUNE 8. 2015.

ANTHONY A. HEYWARD. 279106.
LIEBER CORR INST CB14.
PO BOX. 205.
RIDGEVILLE SC 29472.

Anthony Heyward
ANTHONY A. HEYWARD.

DATED: 6-29-2015

THE STATE OF SOUTH CAROLINA,
IN THE SUPREME COURT.

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS.

R. MARKLEY DENNIS JR.

CASE NO: 2012-CP-10-1320.

ANTHONY A. HEYWARD. 279106.

APPELLANT.

v

STATE OF SOUTH CAROLINA.

RESPONDENT.

CERTIFICATE OF SERVICE.

I ANTHONY A. HEYWARD DO HERE BY CERTIFY THAT I HAVE SERVED RESPONDENTS WITH A TRUE COPY OF THE NOTICE OF APPEAL IN THE ABOVE CAPTIONED CASE AND THAT ~~AND~~ SUCH HAS BEEN MAILED TO THE FOLLOWING ADDRESS ON 6-29-2015 WITH PROPER POSTAGE ATTACHED.

1. OFFICE OF ATTORNEY GENERAL.
P.O BOX. 11549.
COLUMBIA. S.C 29210.

Anthony Heyward
ANTHONY A HEYWARD.

2. SOUTH CAROLINA SUPREME COURT.
P.O BOX. 11330.
COLUMBIA S.C 29210

DATE: 6-29-2015

AG AT SOL QS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)
)
Anthony A. Heyward, #279106,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2012-CP-10-1320

FINAL ORDER

FILED
2015 JUN -2 AM 11:19
CLERK OF COURT

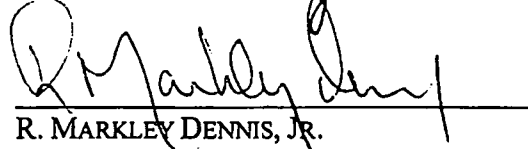
This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 23, 2012. In its Return and Motion to Dismiss dated January 16, 2013, the Respondent requested that the Application be summarily dismissed pursuant to S.C. Code Ann. § 17-27-70 on the basis there was no genuine issue of material fact which would necessitate an evidentiary hearing. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Roger M. Young, Sr. issued a Conditional Order of Dismissal dated January 29, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated January 30, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant made no response to the Conditional Order of Dismissal. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

RMP

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 20th day of May, 2015.



R. MARKLEY DENNIS, JR.
CHIEF ADMINISTRATIVE JUDGE
Ninth Judicial Circuit

Moncks Corner, South Carolina.

RMD/2

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STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 Anthony A. Heyward, #279106,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-10-1320

CONDITIONAL ORDER OF DISMISSAL

FILED
 2013 JAN 29 AM 10:12
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

This comes before the Court by an application for post-conviction relief filed February 23, 2012. The Respondent has made its return and this Court finds:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 2001 and September 2001 terms of the Charleston County Grand Jury for criminal sexual conduct (CSC) – 1st degree (2001-GS-10-549), kidnapping (2001-GS-10-550), and grand larceny (more than \$1000) (2001-GS-10-6092). Leslie Sarji, Esquire, and Boyd Young, Esquire, represented him. On October 15-17, 2001, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable Thomas L. Hughston, Jr. sentenced him to confinement for thirty (30) years each for CSC – 1st degree and kidnapping and five (5) years for grand larceny. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Following an Anders Brief and Applicant's pro se response, the South Carolina Court of Appeals

R

dismissed the Applicant's appeal. State v. Heyward, Op. No. 2003-UP-378 (S.C. Ct. App. filed June 3, 2003). The Remittitur was issued on July 7, 2003.

The Applicant filed his first post-conviction relief application on October 28, 2003 (2003-CP-10-4516). An evidentiary hearing was convened on May 30, 2006 at the Charleston County Courthouse. Clay Olson, Esquire, represented Applicant on his first PCR application. By Order dated January 5, 2007, the Honorable William P. Keesley denied and dismissed the application with prejudice.

The Applicant filed his second post-conviction relief application on July 13, 2009 (2009-CP-10-4331). The State made its Return and agreed to consent to the granting of a belated PCR Appeal pursuant to Austin. By Order dated August 23, 2010, the Honorable Deadra L. Jefferson granted the Applicant a belated appeal pursuant to Austin. The Applicant then filed a Notice of Appeal and Petition for Writ of Certiorari. The Applicant's appeal of his first post-conviction relief action is still pending in the South Carolina Court of Appeals.

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

1. Doyle violations
2. "Deliberate indifference, reasonable probability"
3. Judge's impartiality to be reasonably questioned.

This Court has before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the appellate records, the Order of Dismissal from the Applicant's first PCR, the Consent Order from the Applicant's second PCR, the Notice of Appeal for Austin review of the Applicant's first PCR, and the Respondent's Return.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and 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 October 17, 2001. This Application was filed on February 23, 2012, which was almost 10 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. 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." 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.

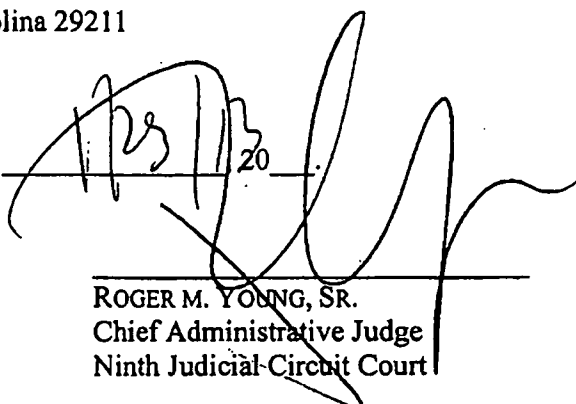
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final.

A handwritten signature in black ink, appearing to be the initials 'PJ' or similar, written in a cursive style.

The Applicant shall file any reasons he may have with the Charleston 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

AND IT IS SO ORDERED this _____ day of _____



ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit Court

_____, South Carolina

ANTHONY A. HEWARD 279106
LIEBER CORR INST EB14.

inter-agency

PO BOX 205
RIDGEVILLE SC 29472.

RECEIVED

JUN 30 2015

SOUTH CAROLINA SUPREME COURT
PO BOX 1133D
COLUMBIA S.C. 29211.

FOR SPECIAL USE ONLY
JUN 30 2015

MAIL ROOM

FOR LEGAL USE ONLY

LIEBER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS
FOR ITS CONTENTS.

THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY