

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2014-CP-22-0064

Michael Lesane,
S.C.D.C. No. 258515,

Applicant,

v.

**CONDITIONAL ORDER OF
DISMISSAL**

State of South Carolina,

Respondent.

FILED
2015 MAR 3 PM 4:23
ALMA WILSON
CLERK OF COURT
GEORGETOWN COUNTY, SC

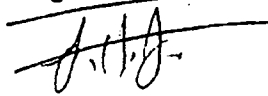
This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Michael Lesane (Applicant) on January 27, 2014. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted during the February 1998 term of the Georgetown County Grand Jury for trafficking in crack cocaine (1998-GS-22-246). Applicant proceeded to trial, and a jury found him guilty as indicted. Russell B. Long, Esquire, represented Applicant. On May 26, 1999, the Honorable C. Victor Pyle, Jr., sentenced Applicant to a term of imprisonment of twenty-five years. Applicant did not immediately appeal his conviction or sentence.

First PCR Application: 1999-CP-22-484

Applicant filed his first PCR application on August 12, 1999, alleging the following grounds for relief:



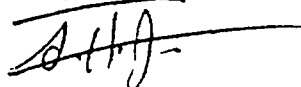
1. Ineffective assistance of counsel:
 - i. Failure to investigate;
 - ii. Failure to subpoena the confidential informant or other witnesses;
 - iii. Failure to cross-examine witnesses;
 - iv. Failure to object to continuing the trial after the name of the confidential informant was revealed;
 - v. Failure to file an appeal;
 - vi. Alleged conflict of interest;
 - vii. Failure to object to fraudulent incident reports;
 - viii. Making comments on Applicant's right to testify; and
 - ix. Failure to object to the tape of the drug transaction;
2. Lack of subject matter jurisdiction; and
3. Court reporter failed to properly transcribe the trial.

An evidentiary hearing was held on July 30, 2001, at the Horry County Courthouse. Brian Wade, Esquire, represented Applicant. The circuit court relieved Mr. Wade as counsel during the hearing, and Applicant proceeded pro se. By order filed June 4, 2002, the Honorable James E. Lockemy denied and dismissed the application with prejudice.

Applicant appealed, and the South Carolina Court of Appeals dismissed his appeal on June 11, 2009.

First Federal Habeas Corpus: 9:02-0146-19BG

Applicant filed a pro se federal petition for a writ of habeas corpus on January 24, 2002. Respondent filed its return and motion for summary judgment on March 8, 2002. Applicant filed a response to the motion for summary judgment on April 12, 2002. The Honorable Bruce H. Hendricks, United States Magistrate Judge, issued a report on July 11, 2002, recommending Applicant's petition be dismissed without prejudice because his state PCR application was pending. The Honorable Dennis W. Shedd, United States District Judge, adopted the magistrate's report and dismissed the petition without prejudice on August 5, 2002.



On August 28, 2002, Applicant appealed to the United States Court of Appeals for the Fourth Circuit. On December 24, 2002, the Fourth Circuit denied Applicant a certificate of appealability and dismissed his appeal.

Second PCR Application: 2003-CP-22-239

Applicant filed his second PCR application on March 24, 2003, alleging the following ground for relief:

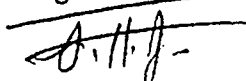
1. Ineffective assistance of PCR counsel (failure to file an appeal).

Respondent made its return on April 9, 2004. An evidentiary hearing was held on September 20, 2004. Reuben Goode, Esquire, represented Applicant. By order filed November 5, 2004, the Honorable B. Hicks Harwell granted Applicant relief to appeal the denial of his first PCR application.

Applicant filed a timely notice of appeal on November 10, 2004. Robert M. Pachak, Esquire, perfected the appeal by filing a petition for a writ of certiorari on May 16, 2006. In the petition, Applicant argued he was entitled to a belated appeal of the denial of his first PCR application and a belated direct appeal. On June 20, 2007, the South Carolina Supreme Court granted his petition for a writ of certiorari pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), and requested parties brief the issue of whether the trial judge erred in refusing to grant a continuance. On April 27, 2008, the court affirmed Applicant's conviction and the denial of his first PCR application. The remittitur was issued on June 2, 2008.

Second Federal Habeas Corpus: 8:06-03595

Applicant filed his second pro se federal petition for a writ of habeas corpus on February 8, 2006. Respondent filed its return and motion for summary judgment on March 31, 2006. Judge Hendricks issued a report on September 19, 2006, recommending Respondent's motion be



granted. On October 20, 2006, the United States District Court of South Carolina adopted the magistrate's report and granted Respondent's motion for summary judgment.

On November 14, 2006, Applicant appealed to the United States Court of Appeals for the Fourth Circuit. On March 29, 2007, the Fourth Circuit denied Applicant a certificate of appealability and dismissed his appeal.

Third PCR Application: 2010-CP-22-0196

Applicant filed his third PCR application on February 2, 2010, alleging the following grounds for relief:

1. Ineffective assistance of appellate counsel:
 - i. "Failure to specifically argue facts with supporting documents."
2. Ineffective assistance of PCR counsel(s):
 - i. "Failure to argue PCR issues not being fully presented."
 - ii. "Failure to provide discovery materials and complete transcripts."

Respondent made its return and motion to dismiss on March 25, 2010, requesting the application be summarily dismissed. The circuit court issued a conditional order of dismissal on March 29, 2010. Applicant responded to the conditional order of dismissal on May 3, 2010. The Honorable Benjamin H. Culbertson issued a final order of dismissal on June 3, 2010.

Applicant submitted a motion to alter or amend pursuant to Rule 59(e), SCRPC. Judge Culbertson denied Applicant's motion on August 17, 2010.

Applicant appealed, and the South Carolina Supreme Court dismissed his appeal on December 13, 2010. The remittitur was issued on December 30, 2010.

II.

Applicant filed his current application on January 27, 2014, alleging the following grounds for relief:

1. Ineffective assistance of appellate counsel:
 - a. "Failed to brief any PCR issues/appealable rights lost because of."
2. Violation of due process.

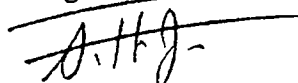
Before this Court are the Georgetown County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, and Applicant's previous and current PCR records.

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) 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 prohibited unless an applicant can present 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.* at 450, 409 S.E.2d at 394. If



Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous applications.

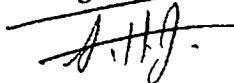
IV.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 held the one-year 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). Applicant was convicted of the offenses he challenges on May 26, 1999. Therefore, Applicant was required to file his PCR application on or before May 26, 2000. Applicant filed this application on January 27, 2014, **more than thirteen years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary



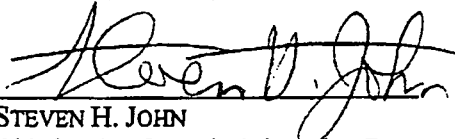
disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this 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 days from the date of service of this order upon him to show why this order should not become final. Applicant shall file any reasons he may have with the Georgetown County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 25th day of March, 2015.


STEVEN H. JOHN
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

 South Carolina

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JT

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 Tonya James (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)

On this 9th day of April, 2015, I served the signed Conditional Order of Dismissal on Inmate Michael Lesane, No. 258515, by delivering personally and leaving a copy of the same at Wateree River Correctional Institution, Rembert, South Carolina. Deponent is not a party to this action.

s/ Tonya James
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9th day of April, 2015
Leon Laborn (L.S.)
Notary Public for South Carolina

My Commission Expires 02/15/2017

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Wateree River Correctional Institution, Rembert, Sumter County, South Carolina, this 9th day of April, 2015.

s/ Michael Lesane
Inmate Signature
SCDC No. 258515

2014-CP-22-0064

RECEIVED

APR 08 2015

W.R.C.I.
WARDEN OFFICE