

STATE OF SOUTH CAROLINA

In The Supreme Court

Appeal From Beaufort County

Carmen T. Mullen, Circuit Court Judge

2012-CP-07-2219

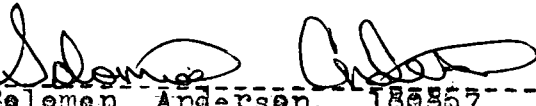
Soleman Anderson, Appellant,

v.

State of South Carolina, Respondent.

Soleman Anderson appeals the 6-17-15 Final Order of Dismissal of the Honorable Carmen T. Mullen, Circuit Court Judge and he received written notice of it on 6-30-15.

July 20, 2015

s/ 
Solomon Anderson, 180557
RCI, GB-46, POB 2039
Ridgeland, S.C. 29936

Other Counsel of Record:

Elizabeth H. Neyle
PCR Division
POB 11549
Columbia, SC 29211

RECEIVED

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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

2012-CP-07-2219

Solomon Anderson, Appellant,
v.
State of South Carolina, Respondent.

PROOF OF SERVICE

Anderson hereby certifies that he served the 'Notice of Appeal' on respondent [State] by placing an envelope in U.S. Mail, postage prepaid, contain said Notice of Appeal, addressed thereto Elizabeth W. Neyle, PCR Division, POB 11549, Columbia, SC 29211 the 22nd day of July 2015

He served the 'Notice of Appeal' to Terri Ann Roseneau through U.S. Postal Service, at PO Drawer 1120, Beaufort, S.C. 29901 the 22 day of July 2015

July 22, 2015

S Solomon Anderson

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

Solomon Anderson, #180867)

2012-CP-07-2219)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

2015 JUN 29 PM 3:22
JEREMY ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 13, 2012. The Respondent (the State) made its Return and Motion to Dismiss on November 10, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated November 20, 2014, 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 13, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant. The Applicant made a timely response on January 12, 2015.

In a document titled "Objection(s) to Conditional Order of Dismissal (COD)," the Applicant argues his application should not be successive to his previous PCR action because he claims his 30-year sentence for Criminal Sexual Conduct expired in 2005 or 2006 and that the trial court lacked subject matter jurisdiction. This Court has reviewed the Applicant's response to the State's motion

to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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 Applicant's claim that his 30-year sentence for Criminal Sexual Conduct expired in 2005 or 2006 is without merit. Applicant was sentenced on December 6, 1991. This would make his max-out date well after 2005 or 2006.

This Court also finds Applicant has shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). 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 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). The Remittitur after Applicant's unsuccessful appeal was issued on November 16, 1992. Therefore,

Applicant was required to file his PCR application on or before July 1, 1997. Applicant filed this application on June 13, 2012, well after the statutory filing period expired.

This Court finds Applicant's claim of jurisdictional defect is without merit and must be summarily dismissed. Applicant alleges the circuit court in Beaufort County lacked jurisdiction because the location of the offense, Callawassie General Store, is in Jasper County. The Beaufort County Grand Jury properly indicted Applicant for the criminal offenses of which he was later convicted at trial.¹

A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). The circuit court in Beaufort County clearly possessed jurisdiction over Applicant's offenses. This allegation is without merit and must be summarily dismissed.

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.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203,

¹ At Applicant's trial, Detective Ledell Chisolm Grice of the Beaufort County Sheriff's Department testified:

Q: In your capacity as a detective, were you assigned to go to the Callawassie General Store?

A: Yes, I was.

Q: Is that here in Beaufort County?

A: Yes, it is.

Trial Transcript, pp. 105-106.

SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17 day of June, 2015



Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.

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14

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
)
)
)
)
Solomon Anderson,)
S.C.D.C. No. 180867,)
Applicant,)
)
v.)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2012-CP-07-2219

CONDITIONAL ORDER OF DISMISSAL

2014 NOV 25 AM 11:01
CLERK OF COURT
SOUTH CAROLINA

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Solomon Anderson (Applicant) on June 13, 2012. 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 Beaufort County Clerk of Court. He was indicted at the April 1991 term of General Sessions for the Beaufort County Grand Jury for criminal sexual conduct in the first degree (1991-GS-07-0413) and kidnapping (1991-GS-07-0414). Dianne Dewitt, Esquire, represented Applicant. Applicant proceeded to trial and a jury found him guilty as indicted. On December 6, 1991, the Honorable Luke N. Brown, Jr. sentenced him to consecutive terms of imprisonment of thirty years for criminal sexual conduct in the first degree and thirty years for kidnapping.

Applicant appealed, and following an *Anders*¹ brief, the South Carolina Supreme Court dismissed the appeal on October 29, 1992. The court noted Applicant wished to withdraw his

¹ *Anders v. California*, 386 U.S. 738 (1967).

appeal and moved the court for an order dismissing his appeal. The remittitur was issued on November 16, 1992.

First PCR Application: 1993-CP-07-0158

Applicant filed his first PCR application on January 28, 1993, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
2. Violation of Fifth, Sixth, and Fourteenth Amendments.
3. Denial of due process of law.
4. Arrest without probable cause.
5. Excessive sentences.
6. Double jeopardy.
7. Abusive discretion by trial judge.
8. Counsel failed to file *Brady* motion.

Respondent filed its return on August 31, 1993. An evidentiary hearing was held at the Beaufort County Courthouse on September 20, 1993. James Hale, Esquire, represented Applicant. The Honorable Jackson V. Gregory denied and dismissed the application with prejudice on December 17, 1993.

Applicant appealed, and following a *Johnson*² petition, the South Carolina Supreme Court denied the petition for a writ of certiorari on November 17, 1994. The remittitur was issued on December 5, 1994.

First Federal Habeas Corpus: 95-cv-1666

Applicant filed a pro se federal petition for a writ of habeas corpus on May 30, 1995. Respondent filed its return and motion for summary judgment on July 31, 1995. The Honorable Bristow Marchant, United States Magistrate Judge, issued a report on November 14, 1995 recommending Respondent's motion for summary judgment be granted. The Honorable Joseph F. Anderson Jr., United States District Judge, granted Respondent's motion for summary

² *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

judgment and dismissed the petition without prejudice on December 21, 1995.

Second Federal Habeas Corpus: 9:10-cv-2413

Applicant filed another federal petition for a writ of habeas corpus on September 30, 2010. Respondent filed its return and motion for summary judgment on February 18, 2011. On May 24, 2011, Judge Marchant issued a report recommending the dismissal of the petition and a grant of Respondent's motion for summary judgment. On July 5, 2011, Judge Anderson adopted the magistrate's report and dismissed the petition.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit dismissed the appeal and issued the mandate on November 16, 2011.

II.

Applicant filed his current PCR application on June 13, 2012. He alleges he is being held in custody unlawfully for the following reasons:

1. Legal sentence has expired under title 17-27-20(a)(5).
 - i. Anderson's 30 year sentence for CSC 1st should have expired on or about 2005 or 2006.
2. Consecutive sentence is invalid under *State v. Varner*, 423 S.E.2d 133, 134 n.3 (1992). "The court is aware that new sentencing guideline will become effective January 1, 1993 if approved by the Governor."
 - i. The consecutive sentence for kidnapping is invalid under *Varner* set forth above herein; more specifically, kidnapping carried a life sentence in 1991 – therefore, consecutive sentence is invalid and void – no sentence.
3. Jurisdictional (territorial and/or geographical) defects.
 - i. Callawassie General Store is located in Jasper County, South Carolina so Magistrate Court and Circuit Court lacked jurisdiction to proceed. *State v. Brown*, 570 S.E.2d 200; see also *Jones v. State*, 507 S.E.2d 324, 326 (1998).

Applicant subsequently filed an amended application on January 6, 2014, alleging the following grounds for relief:

1. Subject matter jurisdiction.
2. Ineffective assistance of counsel.
3. Community supervision program (CSP) unlawfully applied to sentence.

Before this Court are the Beaufort County Clerk of Court records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous and current PCR applications, appellate records, and an applicable portion of Applicant's trial transcript.

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR application. 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 indicate 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).

Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous application. This Court finds this current application must be summarily dismissed because it is successive to his previous application.

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). South Carolina Code 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 in his application on December 6, 1991. The remittitur from Applicant's appeal was issued on November 16, 1992. Therefore, Applicant was required to file his PCR application on or before July 1, 1996.³ Applicant filed this application on June 13, 2012, **more than fifteen years** after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of

³ Section 17-27-45(A) of the South Carolina Code was enacted on July 1, 1995. *Peloquin* held "all those convicted prior to the effective date of the statute should be allowed one year after its effective date to file an application." *Peloquin*, 321 S.C. at 470, 469 S.E.2d at 606. Therefore, under *Peloquin*, Applicant was required to file his PCR application by July 1, 1996.

limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, South Carolina Code section 17-27-70(c) (2014) 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." This Court therefore finds it must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

This Court also finds Applicant's claim of ineffective assistance of counsel must be summarily dismissed pursuant to the doctrine of res judicata. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). Res judicata also bars any issues that could have been raised in the former action. *Id.* Applicant raised the issue of ineffective assistance of counsel in his previous PCR application. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, res judicata bars this claim.

VI.

This Court finds Applicant's claim of jurisdictional defect is without merit and must be summarily dismissed. Applicant alleges the circuit court in Beaufort County lacked jurisdiction because the location of the offense, Callawassie General Store, is in Jasper County. The

Beaufort County Grand Jury properly indicted Applicant for the criminal offenses of which he was later convicted at trial.⁴

The circuit court in Beaufort County clearly possessed jurisdiction over Applicant's offenses. This allegation is without merit and must be summarily dismissed.

VII.

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 Beaufort 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

(Signature on the following page)

⁴ At Applicant's trial, Detective Ledell Chisolm Grice of the Beaufort County Sheriff's Department testified:

Q: In your capacity as a detective, were you assigned to go to the Callawassie General Store?

A: Yes, I was.

Q: Is that here in Beaufort County?

A: Yes, it is.

AND IT IS SO ORDERED this 20 day of Nov., 2014.



CARMEN T. MULLEN
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Beaufort, South Carolina

Ridgeland Correctional Inst.
Georgetown 'B' Room 46
Post Office Box 2039
Ridgeland, South Carolina
29936

20 July 2015

Hon. Daniel Shearouse
Clerk, S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: ANDERSON V. STATE 2012CP072219
Appeal From Beaufort County

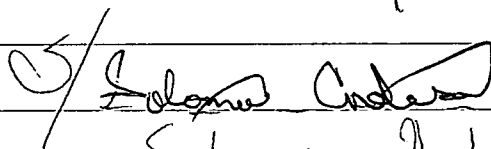
Dear Clerk:

Enclosed herein for filing please find:

1. Final Order to be challenge on appeal;
2. Notice of Appeal;
3. Dennison Response.

Thank you for the attention herein this matter.

Respectfully submitted,



Salomon Anderson

180867

Solomon Anderson, 180867
Ridgeland Correctional Institution
Georgetown, B1, Room 46
P.O. Box 2039 29936
Ridgeland, S.C.



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LEGAL
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