STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

John Bradley Turner, #239626,

Petitioner,

2012-CP-04-02369

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

The Honorable J.C. Nicholson,

Respondent.

This matter comes before the Court by way of a document filed on or about July 3, 2012, captioned "Writ of Mandamus Petition." Respondent filed a Return and Motion to Dismiss Petition for Writ of Mandamus.

PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Petitioner was indicted at the September 2002 term of the Anderson County Grand Jury for murder (2002-GS-04-2531).[1] He was represented by Richard Harold Warder, Esquire. On February 3, 2003, Petitioner pled guilty to each charge as indicted. Petitioner was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of thirty (30) years for murder.[2]

First PCR Application (2003-CP-04-2715)

Petitioner subsequently filed an application for post-conviction relief (PCR) on September 4, 2003, in which he alleged he was being held in custody unlawfully for the following reasons:

[1] Petitioner was also indicted for possession of a firearm during the commission of a violent crime (2002-GS-04-2530); and at the July 2002 term of the Anderson County Grand Jury for trafficking methamphetamine (2002-GS-04-1907), and manufacturing methamphetamine (2002-GS-04-1908). Petitioner waived presentment to the grand jury on an additional charge of manufacturing methamphetamine (2002-Gs-04-0416). These indictments (and subsequent guilty pleas) are not contested or challenged in the current Petition.

[2] Judge Nicholson ordered Petitioner's sentence for murder be run concurrently with his additional sentences for violation of the weapons provision and drug charges. Applicant's aggregate sentence is thirty (30) years.

SEH 1/9

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

Respondent made its Return. An evidentiary hearing was convened on February 6, 2006, at the Anderson County Courthouse. Petitioner was present and represented by Theo Mitchell, Esquire. Respondent was represented by Daniel Grigg, of the South Carolina Office of Attorney General.

The Honorable Alexander S. Macaulay denied and dismissed Petitioner's application by written Order on March 24, 2006. Petitioner subsequently filed a motion for reconsideration pursuant to SCRCP Rule 59(e), which was denied by Order dated December 19, 2006. Petitioner filed a timely Notice of Appeal, and on October 18, 2007, the South Carolina Supreme Court denied Petitioner's appeal. The Remittitur was issued on November 6, 2007.

Second PCR Application (2007-CP-04-3661)

Petitioner then filed a second application for post-conviction relief on November 16, 2007, where alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. Due Process violation, Judge gave incorrect sentence information; and
3. Newly discovered evidence or prosecutor misconduct.

Respondent subsequently filed a Return and Motion to Dismiss. On December 4, 2007, a conditional order of dismissal was issued by the Honorable J. Cordell Maddox, Jr. Petitioner made his response. On March 17, 2008, the Honorable Alexander S. Macaulay issued an Order denying the application. Petitioner filed a Notice of Appeal. On October 7, 2009, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on October 23, 2009.

 FCDI 2/9

Third PCR Application (2009-CP-04-4709)

Petitioner filed his third application for post-conviction relief on December 2, 2009, where he alleged the following grounds for relief:

1. Ineffective assistance of PCR Counsel;
2. Newly discovered evidence of prosecutor misconduct;
3. Trial Judge gave incorrect sentence information.

Respondent subsequently filed a Return and Motion to Dismiss. On March 3, 2010, the Honorable Alexander S. Macaulay issued a conditional order, provisionally denying Petitioner's application. Petitioner made his response. On June 17, 2010, the Honorable R. Lawton McIntosh issued a final order denying the application. Petitioner filed a Notice of Appeal. On August 11, 2010, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on May 4, 2010.

Federal Habeas Corpus Petition (1:10-cv-02433-TMC)

Petitioner subsequently filed a Petition for Habeas Corpus on February 9, 2011, in Federal District Court in the Federal District of South Carolina. On January 17, 2012, the Honorable Timothy M. Cain dismissed the petition. In April, 2012, the Fourth Circuit Court of Appeals dismissed the subsequent appeal. Turner v. Warden of Perry Correctional Institute, No. 12-6171, Mandate and Judgment, Case No. 1:10-2433-TMC, Dkt.#s 60, 60-1 (4th Cir. April 25, 2012).

Current Petition for Writ of Mandamus

Petitioner most recently submitted this petition on or about July 3, 2012, captioned "Writ of Mandamus Petition." Petitioner requests this Court compel the Honorable J.C. Nicholson, Jr., who presided over his guilty plea, to issue an order "correcting" his term of imprisonment to

eighty-five percent (85%) of his current sentence. In the alternative, Petitioner seeks to have his pleas withdrawn, sentences vacated, and a new trial granted.

A hearing was convened on June 3, 2015, at the Anderson County Courthouse, before the Honorable Eugene C. Griffith, Jr. Petitioner was present and represented by Robert Lusk, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. At the hearing, Petitioner stated that Judge Nicholson informed him prior to his guilty plea that he would only serve eighty-five percent of his thirty (30) year sentence for murder. Petitioner sought to enforce what he alleged to be an oral promise by Judge Nicholson. Petitioner also stated that Judge Nicholson wrote a letter to him saying he misspoke regarding the eighty-five percent (85%) language. Finally, Petitioner contended that he never got to introduce evidence of his incorrect sentence in prior post-conviction relief proceedings and never got his full "bite at the apple."

Standard of Review

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6) SCRCP; Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Dismissal of a complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874

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(2006); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Discussion

I.

This Court finds Petitioner's claim is entirely without merit. First, a Writ of Mandamus is an inappropriate vehicle for Petitioner's claim. Instead, these allegations fall under the Uniform Post-Conviction Procedure Act (PCR Act). S.C. Code Ann. §§ 17-27-10 to -160 (2014). The PCR Act "comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence," and "shall be used exclusively in place of them." § 17-27-20(B); see also Simpson v. State, 329 S.C. 43, 46-47, 495 S.E.2d 429, 430-31 (1998) (holding state habeas corpus petition was properly dismissed where the allegations were clearly cognizable under the PCR Act). Petitioner's claims are clearly cognizable under the PCR Act, as evidenced in part by their inclusion in several of Petitioner's prior PCR applications. Moreover, his claim that his guilty plea was involuntary based on misrepresentations by Judge Nicholson, as well as his plea counsel, are clearly cognizable under the PCR Act. § 17-27-20(A)(1) (Including claims that "the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State."). Accordingly, this claim is not properly before this Court as a Writ of Mandamus.

II.

Further, after examining the merits of Petitioner's allegations, this Court finds that Petitioner has failed to state a claim upon which relief may be granted.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the

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plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRCP; see also Ashley River Properties, I, LLC. v. Ashley River Properties II, LLC., 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); Baird v. Charleson County, 333 S.C. 519, 511 S.E.2d 69 (1999).

This Court finds that this Petition is entirely without merit, and is nothing more than an attempt to circumvent the well established procedures for challenging a conviction or sentence by direct appeal, or post-conviction relief. The action fails to state facts sufficient to constitute a cause of action, and must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

1. Failure to State Facts Sufficient to Alter Sentencing

Petitioner's claim seeks relief that is not authorized by law and outside of this Court's authority to grant. Murder is a no-parole offense with a "mandatory minimum term of imprisonment for thirty years to life." S.C. Code Ann. §§ 24-13-100, 16-1-10(D), 16-3-20(A). "[A]n inmate convicted of a 'no parole' offense . . . is not eligible for early release, discharge, or community supervision as provided in § 24-1-560, until the inmate has served at least eighty-five percent (85%) of the actual term of imprisonment." S.C. Code Ann. § 24-13-150(A). Furthermore, inmates convicted of murder are not eligible for work release, early release, discharge, or community supervision. Id.

Judge Nicholson sentenced Petitioner to thirty (30) years imprisonment for murder. Petitioner argues that he was misinformed and led to believe that he would only have to serve eighty-five (85%) of his sentence. However, under the current law of South Carolina, Petitioner received the *absolute minimum* sentence for murder. Additionally, because murder is a "no-parole" offense, he is not eligible for work release, early release, discharge, or community supervision, as a matter of law, and thus is statutorily required to serve the entire sentence. Even assuming this Court was able (and willing) to issue an order requiring Judge Nicholson to alter Petitioner's sentence, such an alteration below the minimum sentence is not within the power and authority vested with a Circuit Court Judge.[3]

2. Failure to State Facts Sufficient to Grant a Writ of Mandamus

"The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issue in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed.

A mandamus will be issued only to compel a public official to perform a mandatory duty. State v. Ansel, 76 S.C. 395, 414, 57 S.E. 185 (1906); Lombard Iron Works v. Town of Allendale, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. Charleston County School District v. Charleston County Election Commission, 336 S.C. 174, 519 S.E.2d 567 (1999). To obtain a writ of mandamus requiring performance of an act, a Petitioner must show that the opposing party has an indisputable and plainly defined duty to perform the act, the ministerial nature of the act, the opposing party's specific legal right for

[3] Nor would Judge Nicholson have jurisdiction to alter Petitioner's sentence. See State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (noting the "long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expirees," except for post-trial motions filed within ten days pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure).

which discharge of the duty is necessary, and the lack of other legal remedy. Id. at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. In Interest of Lyde, 284 S.C. 419, 327 S.E. 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. Id.

This Court finds Petitioner has failed to show the required elements necessary to consider the issuance of a Writ of Mandamus. Specifically, as stated above, Petitioner has no right to a reduction in sentence where he has already received the mandatory minimum term of imprisonment for his offense. It also does not appear that the Respondent – Judge Nicholson – has either the duty *or even the power* to take the action requested by Petitioner. Finally, there are well-established methods for challenging a conviction or sentence, through direct appeal and post-conviction relief. Petitioner also has Federal avenues for relief, where he may be able to raise claims that are procedurally barred in State court. See Martinez v. Ryan, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) ("Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.").

[*Signature block on following page*]

Conclusion

Accordingly, the petition is dismissed because it is not supported by the facts alleged by Petitioner and fails to support the requested relief.

IT IS THEREFORE ORDERED that the "Writ of Mandamus Petition" must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 7th day of July, 2015.

EUGENE C. GRIFFITH, JR.
Presiding Judge

Newberry, South Carolina

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