

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

RECEIVED

AUG - 6 2015

S.C. Supreme Court

EDDIE DEAN DOGAN, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002763

SUPPLEMENTAL APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i
ORDER RESTRICTING FILINGS OF THE APPLICANT1

BM

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Eddie Dean Dogan, Jr. #256596,)	2011-CP-42-0343
)	
Applicant,)	
)	
v.)	ORDER RESTRICTING FILINGS
)	OF THE APPLICANT
State of South Carolina,)	
)	
Respondent.)	

This Order comes as a result of the State's Motion to Restrict Future Filings of the Applicant. The State argued that the Applicant's filings have become repetitive and abusive filings and should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice. This Court agrees.

There is a strong interest in finality of the criminal process; judicial review must stop at some juncture and finality must be realized. Aice v. State, 305 448, 409 S.E.2d 392 (1991). The Court quoted Justice Harlan when discussing the importance of finality in litigation when they stated the following:

"If law, criminal or otherwise, is worth having and enforcing, it must some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task stripping a man of his freedom and subject him to institutional restraints. But this does not mean that in doing so, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. A rule of law that fails to take account of these finality interests would do more than subvert the

CLERK OF COURT
 SPARTANBURG COUNTY
 2011 APR -3 PM 1:05
 HOPLE B. WALKER

criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process... This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first."

Anderson v. Leeke, 271 S.C. 435, 441, 248 S.E.2d 120 (1978).

FINDING OF FACT AND CONCLUSIONS OF LAW

The Applicant's repetitive and abusive filings should be restricted in order to preserve the Court's time and resources and stop any interference with the fair administration of justice.

The Applicant has received his full bite at the apple. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple;" this "bite" includes an applicant's right to appeal the denial of a post-conviction relief application and the right to assistance of counsel in that appeal. Matthews v. Evatt, 105 F.3d 909, 918 (1997), Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989), Odom v. State, 337 S.C. 256, 293 S.E.2d 753 (1999).

FILED IN COURT
SOUTH CAROLINA
2012 APR -3 PM 4:05
H. HOLT, B. CALEY

The Applicant has now filed five (5) PCR Applications on his convictions and he has appealed the dismissals of two of the four previously dismissed applications. The Applicant has also filed a Federal Petition for Writ of Habeas Corpus in the United States District Court - District of South Carolina, attacking the same convictions, and appealed that dismissal. A new PCR Application was filed on January 25, 2011, alleging the same allegations, which have continually been raised.

REMEDY

a. Filing Fee

Due to the repetitive and frivolous nature of Applicant's numerous applications, the Court directs the Spartanburg County Clerk of Court not to accept any further PCR applications from the Applicant unless he pays the normal filing fee generally required for the filing of a summons and complaint. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. In re Whitaker, 513 U.S. 1, 115 S.Ct. 2, 130 L.Ed.2d 1 (1994); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re Sindram, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

This Court also requires the Applicant to pay the normal civil filing fee for any subsequent motions filed in the case. This includes a filing fee for letters which include arguments for the Court to consider. Documents submitted to the Clerk's Office which are not accompanied by the proper filing fee will be returned to the Applicant.

DEPARTMENT OF COURT
 SPARTANBURG COUNTY
 2005 APR 3 PM 4:05
 M. HOPKINS

b. Notarized Affidavit

This Court requires the Applicant to provide a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous in any further PCR applications. In In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), the South Carolina Supreme Court required Maxton, who had filed numerous meritless petitions with the Court, to pay a filing fee and accompany any future filings with a properly notarized affidavit by Maxton certifying that he in good faith believed that the matters he was raising were non-frivolous and proper for the

Court to consider. Id. Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is non-frivolous before accepting filings from the litigant. In the Matter of Verdone, 73 F.3d 669 (7th Cir.1995); Abdul-Akbar v. Watson, 901 F.2d 329 (3d Cir.1990); Green v. Warden, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

Once the Applicant submits an Application that is accompanied by the required filing fee and a notarized affidavit, this Court directs the Clerk's office to submit the Application to the Administrative Judge for Common Pleas before filing. The Administrative Judge will then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it will then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Chief Administrative Judge.

c. Procedure

Once the Applicant submits an Application that is accompanied by the required filing fee and a notarized affidavit, this Court directs the Clerk's office to submit the Application to the Administrative Judge for Common Pleas before filing. The Administrative Judge will then make a finding on whether the issues raised in the Application are non-frivolous and proper for the Court to consider. If the Administrative Judge finds the Application proper, it will then be submitted to the Clerk's office for filing. No Application would be filed without a proper finding from the Administrative Judge for Common Pleas.

The Applicant must provide with his Application an explanation as to why it is not barred as successive or being untimely under the statute of limitations. This explanation must contain

FILED
CLERK OF COURT
SPRINGFIELD
OHIO
2012 APR 13 PM 4:05
M. HOPE CLAVILLE

sufficient facts, arguments and citation to legal authority to show that there is an arguable allegation that is not barred as successive or untimely, and is not based on mere speculation or unfounded accusations. If the Applicant fails to make a sufficient showing, the Application will be summarily dismissed by written order of the Administrative Judge for Common Pleas.

No response is required from the State unless the Judge makes a finding that the Applicant made a sufficient showing. The State will then treat the Application as is customary with all PCR applications. The State does not waive the right to raise defenses of untimeliness and successive at a future hearing.

This Court also warns the Applicant that the PCR court has the authority to issue Rule 11 sanctions against a post-conviction applicant pursuant to the South Carolina Rules of Civil Procedure. Rule 11 provides: "The signature of an attorney or party [on a pleading, motion, or other paper] constitutes a certificate by him that he has read the pleading, motion or other paper, that to the best of his knowledge, information and belief there is a good ground to support it, and that it is not interposed for delay. If a pleading, motion or other paper is signed in violation of this Rule, the court...may impose upon the person who signed it, a represented party, or both, an appropriate sanction." Hiott v. State, 375 S.C. 354, 652 S.E.2d 436 (S.C. App. 2008)

CLERK OF COURT
SPARTANBURG COUNTY
APR 12 2008 3:06 PM
M. HOPE B. ADLEY

IV. CONCLUSION

The Applicant's allegations and accusations have become increasingly frivolous and meritless. The Applicant continues to waste the time and resources of the Spartanburg County Clerk of Court's Office, the Chief Administrative and Presiding Judges in the Sixth Circuit, the South Carolina Attorney General's Office, numerous appointed attorneys of Spartanburg County and surrounding Bars, Court Personnel, and the South Carolina Supreme Court.

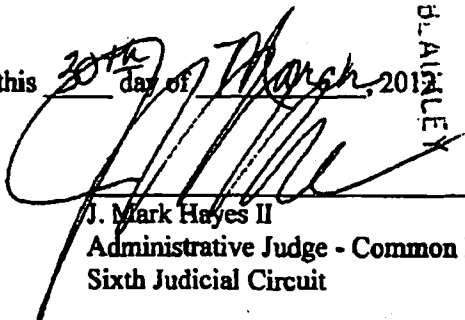
IT IS THEREFORE ORDERED:

For these reasons, this Court orders the following:

1. The Clerk of Court is directed to refuse to accept further petitions and applications from the Applicant asking the Court to entertain matters unless he pays a filing fee generally required for filing motions and petitions with this Court.
2. The Applicant is prohibited from filing any legal actions in any jurisdiction in South Carolina without submitting the requisite filing fees¹ and providing a properly notarized affidavit certifying that the Applicant believes in good faith that the matter raised is not frivolous. The requisite filing fee must also be submitted with any subsequent filings.
3. Any Applications submitted with properly notarized affidavits will be submitted to the Administrative Judge for Common Pleas to make a finding on whether the allegations are non-frivolous and proper for the Court before they are filed; and
4. The Clerk of Courts should be instructed to return all documents that do not comply with this order.

AND IT IS SO ORDERED this

30th day of March, 2012



J. Mark Hayes II
 Administrative Judge - Common Pleas
 Sixth Judicial Circuit

FILED
 CLERK OF COURTS
 SPARTANBURG COUNTY
 2012 APR -3 PM 4:06
 M. HOPE BLAIR/ALX

Spartanburg, South Carolina.

¹ S.C. Code Ann. §8-21-310(1)(a) (Supp. 2004)