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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Dion O. Taylor, #335089,

Applicant,

v.

State of South Carolina,

Respondent.

2012-CP-10-8090

FILED
2015 MAY 13 PM 2:42
JULIE J. A...
CLERK OF COURT

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 11, 2012. The Respondent (the State) made its Return and Motion to Dismiss on March 31, 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, the Honorable Stephanie P. McDonald issued a Conditional Order of Dismissal dated July 17, 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 August 15, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In the document titled "Response to the Conditional Order of Dismissal", the Applicant argues that he was not in a lucid state of mind when he chose to represent himself at his first PCR evidentiary hearing, that plea counsel should have filed a direct appeal on his behalf, that the State committed a Brady violation and that plea counsel was ineffective. This Court has reviewed the



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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.

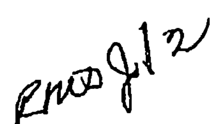
This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> **All grounds for relief available to an applicant** under this chapter **must be raised in his original, supplemental or amended Application.** (emphases added). 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). Applicant could have alleged these allegations in his 2010 PCR action. He simply failed to do so.

The Applicant has also presented no legitimate reasons 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 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 June 3, 2009. Therefore, Applicant was required to file his application before June 4, 2010. This Application was filed on December 11, 2012, which was well past the expiration of the statutory filing period.

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, 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 15th day of May, 2015.

~~Kristi Lea Harrington~~ R. Markley Dennis, Jr
Presiding Judge[1]
Ninth Judicial Circuit

Moncks Corner South Carolina.

1 The Honorable R. Markley Dennis, Jr. presided over Applicant's first PCR evidentiary hearing.



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AT

| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT |
|---|---|---|
| COUNTY OF CHARLESTON | ) | CASE NO.: 2012-CP-10-8090 |
| Dion O. Taylor, S.C.D.C. No. 335089, Applicant, | ) | |
| v. | ) | **CONDITIONAL ORDER OF DISMISSAL** |
| State of South Carolina, Respondent. | ) | |

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JULIE ... CLERK OF COURT
BY

In response to the post-conviction relief application filed December 11, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2009 term of the Charleston County Grand Jury for criminal domestic violence (CDV) - 2nd or subsequent offense (2009-GS-10-0031) and armed robbery (2009-GS-10-0030). He was represented by Cody Groeber, Esquire.

On June 3, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Roger M. Young, Sr. sentenced the Applicant to imprisonment for ten (10) years on the armed robbery and three (3) years imprisonment for CDV, to run concurrently with each other and concurrently with a probation revocation. The Applicant did not appeal.

**2009-CP-10-6320**

The Applicant filed an application for post-conviction relief (PCR) on October 6, 2009 (2009-CP-10-6320). In that application, the Applicant raised the following grounds for relief:



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ATTORNEY GENERAL'S OFFICE
RECEIVED 7/28/14
ADMINISTRATIVE INSTRUCTIONS
____ FILE ____ OPEN ____ END
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__ PEN RECORDS __ CLERK RECORDS
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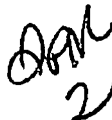
1. Ineffective assistance of counsel.
    a. Gave erroneous evidence.
    b. Failed to investigate.
    c. Failed to get another mental evaluation for Applicant.
    d. Failed to inform plea judge that Applicant was not on medication at time of the offense.

The Respondent made its Return on February 1, 2010. The court initially appointed John T. Chakaris, Esquire to represent the Applicant. On June 21, 2011, through counsel John T. Chakaris, Applicant made a request to amend the petition. In the proposed amendments, counsel attached a *pro se* pleading of the Applicant's in which Applicant alleged:

1. Pleas counsel deprived mentally ill defendant his Sixth and Fourteenth Amendment rights when ineffective counsel:
    a. Counsel was ineffective when counsel provided me erroneous, inaccurate and untrue to get me to plead guilty.
    b. Counsel withheld evaluation reports that was considered prior to 9/24/08 from myself, from judge show transcript.
    c. Provided state evaluation report to the judge while Applicant was medicated for mental illness.
    d. Failed to withdraw applicant's guilty plea.
    e. Failed to request a Blair hearing to decide whether mentally ill Applicant was competent during the time at criminal act when I was not medicated.
    f. Failure to investigate and contact witnesses and discover exculpatory evidence and get witnesses who would testify and to present evidence showing applicant mental state, just months before crime.
    g. Failure to consult with Defendant (i.e. direct appeal, about state eval, etc.).
    h. Failure to advise defendant about a potentially affirmative defense to charged crime.
    i. State evaluation discrepancies, issues, prove incompetence, prejudicial by never being.
2. Rule 11 (B).
3. Judge Abused his discretion.
4. Transcript discrepancies.
5. State return - no direct appeal, no statement of confession.





On November 18, 2010, the Honorable Kristi Harrington relieved Mr. Chakaris as counsel. The Clerk of Court appointed Florence Scarborough, Esquire, on December 7, 2010. An evidentiary hearing into the matter was convened on March 1, 2011, at the Charleston County Courthouse before the Honorable R. Markley Dennis. At the outset, counsel was relieved and the Applicant chose to appear *pro se.* Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Judge Dennis entered a written order of Dismissal dated April 5, 2011, and filed April 13, 2011.

**The Premature March 2011 Notice of Appeal**

After the hearing, Respondent submitted a proposed order to Judge Dennis. On March 14, 2011, the Applicant made a notice of appeal. On April 12, 2011, the South Carolina Supreme Court entered an Order of Dismissal as to the appeal because a final order of dismissal was not provided to the Supreme Court. Applicant then filed a "Motion to Alter and/or Amend Judgment" in which he asserted that he provided the court with an unsigned and undated copy of the order of dismissal. The Supreme Court construed this filing as a motion to reinstate the appeal. In an Order dated April 21, 2011, the Supreme Court of South Carolina stated that it had reviewed the records of the Charleston County Clerk of Court's website which indicated that the Order of Dismissal was signed April 5, 2011, and entered in the Clerk's Office on April 13, 2011. The Supreme Court then concluded that the filed notice of appeal was premature because it was filed prior to the entry of the final order in the case, citing SCACR Rule 243 (b), and Rule 203(B)(1). The Court denied the request to reinstate the appeal; however, it concluded that:

> Since this order serves as written notice that the order of dismissal has been entered by the Charleston County Clerk of Court, petitioner shall have thirty days from the date he receives this order to serve and file another notice of appeal, which must include proof of service on the Attorney General's Office and a copy of the signed and dated order of dismissal. Rule 243(b) and 203(b)(1).