STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Robert J. Miller, Jr., #316047, Applicant,	)	2015-CP-20-0078
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief filed March 5, 2015. The Respondent made its return and motion to dismiss on or about April 24, 2015.

Procedural History

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning.[1] Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge, Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of three (3) years, the balance would be suspended with probation. Restitution of $30,000.00 was also ordered. The Applicant did not appeal.

2012-CP-20-0352

1 As a result of his plea, approximately eight other charges were dismissed. (Tr. p. 3, lines 6-9.)

The Applicant filed his first application for post-conviction relief on August 30, 2012. The Applicant raised the following issues in his first application:

1. Ineffective assistance of counsel.
   a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
   b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
   a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
   a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

An evidentiary hearing was convened on July 28, 2014 at the Lancaster County Courthouse. The Applicant was present and represented by W. Michael Hemlepp, Jr., Esquire. The State was represented by J. Croom Hunter, Esquire, of the South Carolina Office of the Attorney General. By Order signed August 28, 2014 and filed September 10, 2014, the Honorable W. Jeffrey Young denied and dismissed the application.

A timely Notice of Appeal was filed and an appeal was filed pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) by Wanda H. Carter, Esquire, of the Office of Appellate Defense. By Order dated April 23, 2015 The Supreme Court of South Carolina denied the petition. As of this writing, the remittitur has not been returned to the circuit court.

In his current application, Applicant raises the following issues:

1. Ineffective assistance of counsel.
2. Lack of jurisdiction.
3. Denial of Due Process.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 application under this chapter must be raised in his original, supplemental or amended Application. 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).

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 additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to –160 . 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 judgement 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 offense(s) he challenges in this Application on April 3, 2012. This Application was filed on March 5, 2015, which was well after the statutory filing period had expired.

This Court summarily dismisses the current Application because the circuit court had jurisdiction to decide the Applicant's case. In his Application, the Applicant has claimed subject matter jurisdiction violations.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, *supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Fairfield County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of 5/5, 20 15

BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit

Clinton, South Carolina