

September 2015

Clerk's office

P.O. Box 11330

Columbia, SC 29211

Re: HUNTER VS. STATE

Dear Sir,

Enclosed please find for processing

1. Notice of appeal
2. Proof of service
3. Orders challenged on appeal

RECEIVED

SEP 17 2015

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN The Supreme Court

APPEAL FROM DARLINGTON COUNTY
PAUL M. BURCH CIRCUIT COURT JUDGE

2015 - CP - 16 - 0034

RECEIVED

SEP 17 2015

S.C. SUPREME COURT

MARIO D. HUNTER, Appellant,

VS.

State of South Carolina Respondent.

NOTICE OF APPEAL

I, MARIO D. HUNTER, 273701 Appeals the "Final order" of the Honorable Paul M. Burch dated 7-29-15 I receive written notice of it on 19 August 2015.

September 14, 2015

151 Mario D. Hunter

= MARIO D HUNTER, 273701

RCL, BR-45, P.O. BOX 2039

Ridgeland, S.C. 29936

Other Counsel of Record:

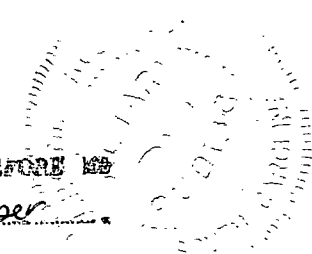
Elizabeth H. Neyle
PCR Division
P.O. BOX 11549
Columbia, SC. 29211.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14th DAY OF September

2015
Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2021



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM Darlington County
PAUL M. BURCH, Circuit Court Judge

2015 - CP - 16 - 0034

MARIO D. HUNTER, Appellant,

VS.

STATE OF SOUTH CAROLINA, Respondent.

RECEIVED

SEP 17 2015

S.C. SUPREME COURT

PROOF OF SERVICE

I HUNTER do hereby certify that I have served the "Notice of Appeal" on the state by depositing a copy of it in the U.S. Mail Postage Prepaid, addressed to their attorney of record:

Elizabeth H. Weirle
P.O. BOX 11549
Columbia, S.C. 29211

Also served: Clerk of Court, Darlington County. / Public
sawyer, Darlington, S.C. 29532 this 14 day of
septembe 2015.

5/ Mario D. Hunter

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14th DAY OF September
2015.

Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Mario Hunter, #273701,)

Case No. 2015-CP-16-34

Applicant,)

FINAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, SC.

2015 AUG -3 AM 11:27

FILED

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed January 12, 2015. Respondent made a timely Return and Motion to Dismiss on or about May 15, 2015, requesting the Application be summarily dismissed as successive and untimely. Pursuant to this motion, the Court reviewed the pleadings in this matter and all of the records attached thereto. The Court issued a Conditional Order of Dismissal, filed on June 12, 2015, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said order to show why the dismissal should not become final. Attached to this final order and incorporated herein by reference is the Affidavit of Personal Service, dated June 26, 2015, of the above-mentioned conditional order on Applicant.

Applicant filed a response to the conditional order on July 6, 2015. In his response, Applicant alleges: violations of his right to due process; violation of the separation of powers doctrine; lack of subject matter jurisdiction; and violations of his right to effective assistance of counsel.

The Court has reviewed the original pleadings, Applicant's response, and all relevant documents. The Court finds Applicant has not shown a sufficient reason why the application was not successive and untimely such that the conditional order should not become final.

TRUE CERTIFIED COPY,

Page 1 of 2 Suggs

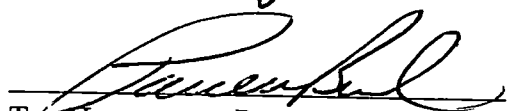
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, SC


Specifically, Applicant's response to the conditional order fails to present any reason why the issues raised therein could not have been pursued in his initial post-conviction relief action.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice**.

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. Applicant's attention is directed to Rules 203 and 243, SCACR, for appropriate procedures for appeal.

IT IS SO ORDERED THIS 29th DAY OF July, 2015.



THE HONORABLE PAUL M. BURCH
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

, South Carolina

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2015 AUG -3 AM 11:37

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Page 2 of 2
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DARLINGTON COUNTY, SC

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Mario Hunter,
S.C.D.C. No. 273701,

2015-CP-16-0034

SCOTT B. SUGG
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

2015 JUN 12 AM 11:03

FILED

Applicant,

CONDITIONAL ORDER OF
DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Mario Hunter (Applicant) on January 12, 2015. 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 Darlington County Clerk of Court. Applicant was indicted during the February 2007 term of the Darlington County Grand Jury for petit larceny (2007-GS-16-432) and two counts of burglary in the first degree (2007-GS-16-433, 434). J. Richard Jones, Esquire, represented Applicant. Applicant proceeded to trial, and the Honorable Howard P. King granted Applicant's directed verdict motion as to indictment number 2007-GS-16-434. A jury found Applicant guilty as indicted of the two remaining charges. On October 23, 2007, Judge King sentenced Applicant to a term of imprisonment of twenty years for burglary in the first degree and thirty days for petit larceny.

Applicant appealed, and the South Carolina Court of Appeals affirmed his convictions.

TRUE CERTIFIED COPY,

Page 1 of 5

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

State v. Hunter, Op. No. 2009-UP-530 (S.C. Ct. App. filed Nov. 19, 2009).

First PCR Application: 2010-CP-16-0426

Applicant filed his first PCR application on July 2, 2010, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel:
 - i. Failed to investigate the facts of the case.
2. Ineffective assistance of appellate counsel:
 - i. Failed to present issues on appeal.

Respondent made its return on September 28, 2010, and an evidentiary hearing was held on June 9, 2011, at the Darlington County Courthouse. Charles T. Brooks, III, Esquire, represented Applicant. The Honorable J. Michael Baxley denied and dismissed the application on July 18, 2011.

Applicant appealed, and the South Carolina Supreme Court denied his *Johnson*¹ petition for a writ of certiorari on July 22, 2013. The remittitur was issued on October 24, 2013.

First Federal Habeas Corpus Petition: 5:13-cv-2979

Applicant filed a pro se federal petition for a writ of habeas corpus on April 3, 2014. Respondent filed its return and motion for summary judgment on August 27, 2014. The Honorable Kaymani D. West, United States Magistrate Judge, issued a report on November 5, 2014, recommending Respondent's motion for summary judgment be granted. The Honorable Mary G. Lewis, United States District Judge, adopted the magistrate's report and granted the motion for summary judgment on December 3, 2014.

II.

Applicant filed his *second* and current application on January 12, 2015, alleging the following grounds for relief:

¹ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

1. Ineffective assistance of counsel;
2. Subject matter jurisdiction;
3. Due process;
4. 5th, 6th, 13th, 14th, 15th Amendment violations; and
5. "Fraud on the court."

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, and Applicant's previous and current PCR records.

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 present 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).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application 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). 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 on October 23, 2007. The South Carolina Court of Appeals affirmed his convictions on November 19, 2009. Therefore, Applicant was required to file his PCR application on or before November 19, 2010. Applicant filed this application on January 12, 2015, **more than four years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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 must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

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 Darlington County Clerk of Court and shall serve opposing counsel at the following address:

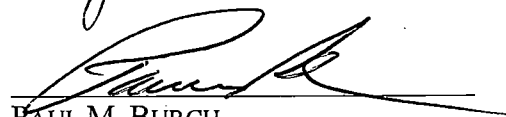
Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2015 JUN 12 AM 11:08

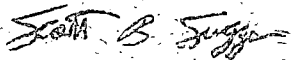
FILED

AND IT IS SO ORDERED this 18th day of June, 2015.


PAUL M. BURCH
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

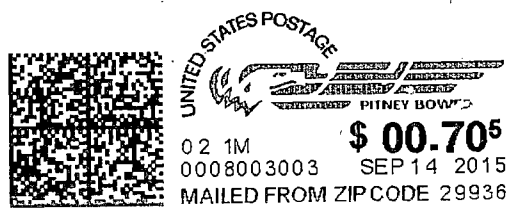
Chesterfield, South Carolina

TRUE CERTIFIED COPY,


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Page 5 of 15
DARLINGTON COUNTY, SC

Mr. Hunter Marco D.
#273901 RCI.
P.O. Box 2039
Ridgeland, SC, 29936

Supreme Court
P.O. Box 11330
Columbia, SC. 29211



Ridgeland Correctional
Institution

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