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STATE OF SOUTH CAROLINA	CLERK OF COURT	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	PICKENS COUNTY	2015-CP-39-0501
	SOUTH CAROLINA	
Willie Jerome Lopez,)	
S.C.D.C. No. 275027,)	
)	
Applicant,)	
)	CONDITIONAL ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 16, 2015. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Pickens County. The Applicant waived presentment to the Pickens County Grand Jury for 2 counts of distribution of cocaine (2008-GS-39-1934, -1937) and distribution of cocaine within proximity of a school or park (2008-GS-39-1936). He was represented by James S. Erwin, III, Esquire.

On November 20, 2008, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 17 years for each count of distribution of cocaine, third offense and 10 years for distribution of cocaine within proximity of a school or park. The Applicant did not appeal.

The Applicant filed a PCR application on February 4, 2009 (2009-CP-39-0223). The



Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Rule 5/Brady violation.

An evidentiary hearing was convened on November 9, 2009 at the Pickens County Courthouse. Frank Eppes, Esquire represented the Applicant. The Honorable G. Edward Welmaker denied and dismissed the PCR application by order filed December 18, 2009. By order filed March 5, 2010, Judge Welmaker denied the Applicant's subsequent Motion for Reconsideration and to Reopen Evidentiary Portion of the Case.

The Applicant filed a notice of appeal. LaNelle C. DuRant, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals, which denied the petition by order filed July 12, 2013. The remittitur was sent July 31, 2013.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel:
 - a. Failed to "adequately investigate, research and prepair sufficient evidence to support petitioners arguement of illegal conviction of a third (3rd) offense drug violation, When it should have been a second (2nd) offense during Post-Conviction hearing, prejudice petitioner ability to present evidence to the court to have the unlawful enhancement of the offense reviewed... The evidence of the uncounseled convictions use for enhancement would have shown beyond a reasonable dout the courts had no jurisdiction to except the guilty plea and petitioner is intitled to relief."
 - b. Failed to "to give a Jus actionis of due process during the PCR proceedings to support Applicant's Rule 5, Brady violation."
2. The PCR judge "erred in denying his PCR application and motion for reconsideration and reopen the evidentiary portion of the case."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 Applicant pled guilty to the offenses he challenges in this application on November 20, 2008. The Applicant was therefore required to file his application before November 20, 2009. This application was filed on April 16, 2015, which was more than 5 years and 4 months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

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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 forbidden unless an applicant can point to 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. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

This Court finds the Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR

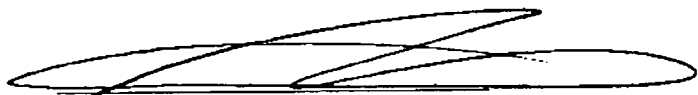
application under § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) 02

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VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 30 day of JULY, 2015.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29201

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Cynthia G. Sanders (Server) 1:41 as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)

AFFIDAVIT OF PERSONAL SERVICE

On this 13 day of August 2015, I served the **Conditional Order of Dismissal**, on **Inmate Willie Jerome Lopez, SCDC Inmate # 275027**, by delivering personally and leaving a copy of the same at **Allendale Correctional Institution, Fairfax, SC**. Deponent is not a party to this action.

s/ Cynthia G. Sanders

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 13th day of August, 2015

Debbie L. McCaskay (L.S.)
Notary Public for South Carolina

My Commission Expires: July 10, 2024

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Allendale Correctional Institution), Fairfax, Allendale County, SC this 13 day of August, 2015.

s/ Willie Lopez
Inmate
SCDC Inmate #: 275027