

12 November 2015

Daniel Shearouse, Clerk
S. C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Grayson v. State. 2014CP40053

Dear Clerk:

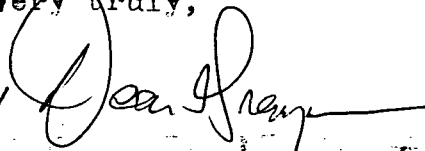
Enclosed please find for filing:

1. Notice of appeal;
2. Proof of service;
3. order(s) which are challenged on appeal.

Thank you for the attention herein the matter.

Very truly,

s/



Dean C. Grayson, 290628
RCI, GA-32, POB 2039
Ridgeland, S.C. 29936

RECEIVED

NOV 20 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Alison Renee Lee, Circuit Court Judge

2014c-400053

DEAN C. GRAYSON, 290628, Appellant,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RECEIVED

NOV 20 2015

S.C. Supreme Court

NOTICE OF APPEAL

Dean C. Grayson appeals the Final Order of Dismissal of the Hon. Alison Renee Lee which was dated 10-15-15 and received by appellant on 10-28-15.

November 13, 2015

/s/ 

Dean C. Grayson
RCI, GB-32, POB 2039
Ridgeland, S. C. 29936

Other Counsel of Record:

Megan Harrison Jameson
Attorney General's Office
POB 11549
Columbia, S.C. 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

2014CP400053

DEAN C. GRAYSON, 290528, Appellant,

vs.

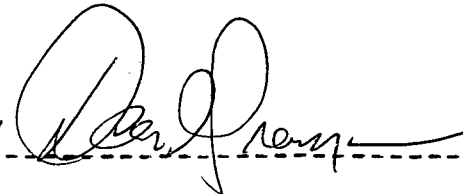
STATE OF SOUTH CAROLINA, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by depositing a copy of it in the United States Mail, postage prepaid, on November 16, 2015, addressed to the attorney of Record, Megan H. Jameson, POB 11549, Columbia, S.C. 29211.

He also served:

Jeanette W. McBride
Clerk of Court, Richland County
POB 2766
Columbia, SC 29202-2766

s/  _____

RECEIVED

NOV 20 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dean C. Grayson, #290628,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2014-CP-40-00053

FINAL ORDER OF DISMISSAL

JEANETTE L. W. McBRIDE
C.C. & G.S.

OCT 20 PM 12:10

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 6, 2014. Respondent made its Return and Motion to Dismiss May 6, 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, this Court issued a Conditional Order of Dismissal filed June 10, 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 June 27, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a Response that was received by the Respondent in mid-June, 2014. In this document, Applicant reasserts the allegations contained in his appendix to his PCR application. Applicant has not filed or served any other documents in this action.

This Court has reviewed Applicant's response to the Court's Conditional Order of Dismissal 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 has already ruled that these grounds do not warrant a hearing. Applicant has not presented any new evidence that may benefit him or persuade this Court to grant him relief.

This Court further finds that Applicant's current application is successive to Applicant's previously filed applications, filed outside the statute of limitations, barred by the doctrine of *res judicata*, and does not present facts that may be considered as newly-discovered evidence according to PCR case law. Accordingly, this Court finds the current application fails to state a claim which creates any genuine issue of material fact for this Court to consider.

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 advises 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. 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 October, 2015



ALISON RENEE LEE
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dean C. Grayson, #290628,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-00053

CONDITIONAL ORDER OF DISMISSAL

JEANETTE W. HEDGECOCK
C. P. & G. S.
2014 JUN 10 PM 12:00
RICHLAND COUNTY
FILED

This matter comes before this Court by way of an application for post-conviction relief filed January 6, 2014.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the October 2002 term of the Richland County Grand Jury for Murder (02-GS-40-10743). Applicant was represented on the charges by Samuel M. Mokeba and April W. Sampson, Esquires. Applicant pleaded guilty as indicted before the Honorable James C. Williams on February 3, 2003. Judge Williams sentenced Applicant to forty (40) years imprisonment.

Applicant filed a timely notice of appeal on February 13, 2003. Joseph L. Savitz, III, Esquire, Deputy Chief Attorney of the South Carolina Office of Appellate Defense represented Applicant on his appeal. On February 5, 2004, Mr. Savitz filed a Final Anders Brief of Appellant¹ and petitioned to be relieved as counsel. Applicant did not file a *pro se* response. The South Court of Appeals dismissed Applicant's appeal and granted counsel's petition to be

¹ See Anders v. California, 386 U.S. 738 (1967).

relieved in an unpublished opinion. State v. Dean C. Grayson, 2004-UP-456 (S.C. Ct. App., August 26, 2004). The remittitur was issued on September 28, 2004.

2005-CP-40-01045

Applicant subsequently filed an application for post-conviction relief on May 8, 2005, where he alleged he was being held unlawfully for the following reasons verbatim:

1. Ineffective assistance of trial counsel, in that counsel
 - a. Failed to review police and laboratory reports, and for failing to inquire why additional testing was not done;
 - b. Failed to investigate the viability of an insanity defense which would have rendered Applicant's plea involuntary;
 - c. Failed to interview Applicant's psychiatrist to determine Applicant's competency to plead and Applicant's psychological state at the time of the incident;
 - d. Failed to spend sufficient time with Applicant to adequately prepare for the case;
 - e. Allowed Applicant to plead, when Applicant steadfastly maintained that he was innocent;
 - f. Coerced Applicant to plea in order to conceal counsel's lack of preparation; and
 - g. Failed to protect Applicant from prosecutorial vindictiveness.

The State filed its Return on or about October 17, 2005. An evidentiary hearing was held on August 10, 2006, before the Honorable Alison R. Lee. Applicant was represented in his PCR action by Tara D. Shurling, Esquire. Robert L. Brown, Esquire represented the State. Judge Lee signed an Order of Dismissal on November 3, 2006 which denied and dismissed the application. The court found that counsel was not ineffective in any manner.

Applicant attempted to appeal the PCR court's decision and filed a timely notice of appeal on November 30, 2006. On appeal, Applicant was represented by Wanda H. Carter, Esquire, Deputy Chief Attorney for the South Carolina Office of Appellate Defense. Applicant's counsel filed a Johnson² Petition for Writ of Certiorari on June 8, 2007 where she requested to be relieved as counsel. Applicant filed a *pro se* response to the Johnson Petition. In his response,

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

Applicant argued that trial counsel rendered “constitutionally” ineffective assistance for failure to advocate and prosecute Applicant’s case where the evidence equally supported both Applicant’s version of the events of the incident that an accident had occurred, as opposed to the state’s theory and version of events, that a “murder” had been committed. In an Order dated February 21, 2008, the South Carolina Supreme Court denied Applicant’s Petition for Writ of Certiorari. After careful consideration of the entire record as required by Johnson, the Court denied the petition and granted counsel’s request to withdraw.

2008-cv-01888-RBH

Applicant then filed a petition for writ of habeas corpus on May 13, 2008, in federal district court. Petitioner raised the following issues:

1. The trial court failed to inform Applicant of his right of confrontation before accepting his guilty plea.
2. Ineffective assistance of counsel.

On July 21, 2008, the Respondent filed a motion for summary judgment and then an amended return on August 14, 2008. The federal district court granted Respondent’s motion for summary judgment by Order dated December 5, 2008, finding that Petitioner’s claims were without merit.

CURRENT APPLICATION

In his second and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Unlawful sentence
2. Ineffective assistance of counsel.
3. Coerced into plea of guilt.
4. Community supervision program (CSP) unlawfully applied to sentence.

Before this Court are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant’s records from the South Carolina Department of Corrections,

Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) 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.

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 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).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also 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, et. seq. 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 pleaded guilty to the offenses he challenges on February 3, 2003. The remittitur from Applicant's direct appeal was issued on September 28, 2004, so he was therefore required to file his application on or before **September 29, 2005**. This Application was filed on January 6, 2014, which was over eight (8) years after the statutory filing period had expired.

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) (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 the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Res Judicata

This Court further finds that the doctrine of *res judicata* bars the Applicant's claims of ineffective assistance of counsel. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.* The Applicant has raised issue of ineffective assistance of counsel in his previous PCR application. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, this Court finds that these claims are barred by *res judicata*.

Newly Discovered Evidence

Furthermore, this Court finds that Applicant's claims of newly or after discovered evidence must be dismissed, as Applicant has failed to set forth any specific allegations of the nature of the evidence. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has failed to establish that the alleged evidence meets *any* of the requirements for after-discovered evidence. Therefore, this Court finds that this allegation, and this application, must be dismissed.

III. 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 9 day of June, 2014.


L. Casey Manning
Presiding Judge
Fifth Judicial Circuit


_____, South Carolina

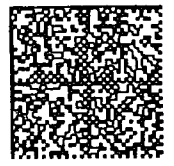
Ben Grayson, 290628
RIDGELAND C.I. Unit, Room 32
Georgetown, Box 2039
Ridgeland, S.C. 29936

RIDGELAND CORRECTIONAL
INSTITUTION

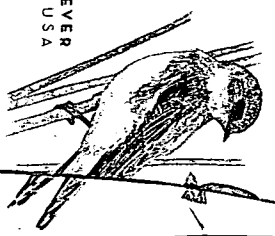
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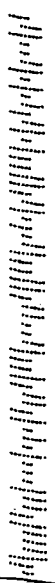


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