

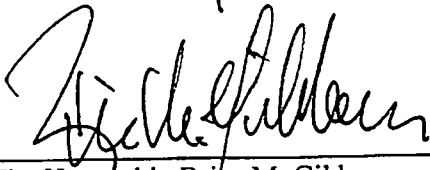
This Court has reviewed Applicant's motion and finds Applicant is not entitled to an evidentiary hearing based upon the claims raised. Accordingly, the motion is denied.

Furthermore, this Court has reviewed 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 Applicant has failed to provide a sufficient reason for his failure to comply with the statute of limitations in this matter. This Court also finds the Applicant has had a full opportunity to litigate the claims he raises in this matter in his previous post-conviction relief matters. Accordingly, this Court finds this Application is denied and dismissed with prejudice.


IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and this Final Order, the Application for post-conviction relief 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. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this _____ day of 10/27, 2015.



The Honorable Brian M. Gibbons
Chief Administrative Judge
6th Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
Robert Little, #273121,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-29-1177

CONDITIONAL ORDER OF DISMISSAL

FILED
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OF COURT
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LANCASTER, SC

This matter comes before this Court by way of an application for post-conviction relief filed August 22, 2012. Respondent made its Return and Motion to Dismiss.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the December 1999 term of the Lancaster County Grand Jury for criminal sexual conduct with a minor, first degree (1999-GS-29-1718)¹. He was represented by Glenn Rogers, Jr, Esquire. On February 26, 2001, the Applicant proceeded to trial by jury and was found guilty of the indicted offense. The Honorable Lee S. Alford sentenced him to a confinement of twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf by Glenn Rogers, Jr., Esquire. By Order dated June 5, 2001, the South Carolina Court of Appeals dismissed the appeal for failure to timely order the trial transcript. Mr. Rogers filed a Motion to Reinstate Appeal dated June 19, 2001.

¹ The Applicant was previously indicted at the November 1997 term of the Lancaster County Grand Jury for lewd act upon a minor (1997-GS-29-993). The Applicant does not challenge this conviction in his application, but does refer to it during his allegations in his previous PCR application (2006-CP-29-656).



The remittitur was issued June 21, 2001. A letter dated June 22, 2001 from the South Carolina Court of appeals was sent to Mr. Rogers stating that time had elapsed before he filed his motion.

The Applicant filed his first PCR on March 26, 2002 (2002-CP-29-0226) in which he alleged the following grounds for relief:

1. Court lacked subject matter jurisdiction;
2. Ineffective Assistance of Counsel.

On June 2, 2003, an evidentiary hearing was held at the Lancaster County Courthouse before the Honorable Kenneth G. Goode. The Applicant was present and was represented by George W. Speedy, Esquire. By Order dated December 4, 2003, Judge Goode granted the Applicant's belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Tara S. Taggart, Esquire submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Supreme Court of South Carolina denied certiorari. State v. Little, 2005-MO-014 (S.C. Sup. Ct. filed April 25, 2005). The Remittitur was issued on May 12, 2005.

The Applicant filed his second PCR on June 15, 2006 (2006-CP-29-0656). Applicant set forth the claims of ineffective assistance of counsel and subject matter jurisdiction in his application and several amendments. On February 28, 2008, an evidentiary hearing was convened at the Fairfield County Courthouse. The Applicant was present at the hearing and represented by counsel. At that hearing, the State initially consented to belated review of Applicant's first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). When it later became apparent that Applicant had already appealed the denial of his first PCR, the State moved to rescind the consent. The matter was ultimately resolved by order of the South Carolina Supreme Court filed May 3, 2011, in which the Court found that because Applicant had already been afforded full appellate review, he

was not entitled to a second review pursuant to Austin, supra. The remittitur was sent on April 25, 2011.

Applicant's Current PCR Application

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

1. "Trial and PCR Counsel(s) Ineffectiveness."
2. "Subject Matter Jurisdiction or Lack of Jurisdiction."

Before this Court are the records of the Lancaster 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

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).

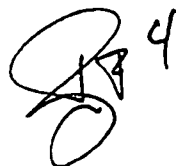
This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could 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 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 (2003). 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 February 28, 2001. The



Remittitur for the Applicant's appeal was issued on June 21, 2001. This Application was filed on August 22, 2012, well 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 finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute, barred by the doctrine of *res judicata*, and because it is successive to his previous applications.

Summary

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

Mary S. Williams, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 14 day of March, 2014.


BRIAN GIBBONS

Chief Administrative Judge
Sixth Judicial Circuit

Lancaster, South Carolina