

STATE OF SOUTH CAROLINA  
In The Supreme Court

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DEC - 9 2015

CERTIORARI TO SPARTANBURG COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2014-002763

Eddie Dean Dogan, Jr., ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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### **QUESTION PRESENTED**

Did the PCR court correctly rely on an Order Restricting Future Filings in summarily dismissing Petitioner's sixth and seventh applications for PCR for failing to comply with the Order where Petitioner failed to pay the filing fee or submit an affidavit as the Order required?

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner was indicted at the August 1998 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor – 1<sup>st</sup> Degree (98-GS-42-3569) and contributing to the delinquency of a minor (98-GS-42-3570). Petitioner was subsequently indicted at the October 1998 term of the Spartanburg County Grand Jury for kidnapping (98-GS-42-5180). He was represented by Don A. Thompson, Esquire. On March 1, 1999, the Petitioner proceeded to trial and was found guilty of the indicted offenses. He was sentenced by the Honorable Henry F. Floyd to consecutive terms of confinement for thirty years for criminal sexual conduct with a minor, and fifteen years for kidnapping, and a concurrent term of three years for contributing to the delinquency of a minor.

Following his trial, a timely notice of appeal was filed on Petitioner's behalf and an appeal was perfected by the South Carolina Office of Appellate Defense. Wanda H. Haile, Esquire, filed a brief pursuant to Anders v. California, 386 US 738 (1967). The Court of Appeals dismissed the appeal by order State v. Dogan (Op No. 2000-UP-436) dated June 7, 2000. The Remittitur was issued on June 26, 2000.

Petitioner filed five applications for PCR prior to filing the two applications that are the subject of this Petition. (Supp. App. p. 2). Following the fifth PCR, which raised the same allegations that Petitioner had continually raised in previous applications, the Honorable J. Mark Hayes II filed an Order Restricting Future Filings on April 3, 2012. (Supp. App. pp. 1-6). The Order prohibited the Petitioner from filing any subsequent applications unless he accompanied the submission with a filing fee and a notarized affidavit certifying it was submitted in good faith and raised non-frivolous issues. (Supp. App. pp. 1-6). The Order also directed the Clerk of Court

to refuse any application submitted by Petitioner unless he paid the appropriate filing fee. Upon information and belief, Petitioner did not appeal the Order Restricting Future Filings.

Fourteen months later, Petitioner filed his sixth PCR application on June 4, 2013, and his seventh PCR application on June 20, 2013. In both applications, Petitioner alleged actual innocence, insufficient evidence, “Proficiency test results,” and “Prosecution/Detective Boyd Investigation Results Report.” Petitioner failed to state in either application that he had filed previous applications for PCR. (App. p. 3, ¶12, p. 10, ¶12). On October 22, 2014, Respondent made its Return and Motion to Dismiss. (App. pp. 15-16). On November 20, 2014, the Honorable J. Derham Cole filed an Order of Dismissal dismissing Petitioner’s 2013 applications for failure to comply with the Order Restricting Future Filings. (App. pp. 17-18).

## STANDARD OF REVIEW

In reviewing the propriety of a summary dismissal, this Court must assume facts presented by Petitioner are true and must view the facts in the light most favorable to the Petitioner. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). “The Court will reverse the PCR judge's decision when it is controlled by an error of law.” Id. at 435, 611 S.E.2d at 495 (citations omitted).

## ARGUMENT

**The PCR court correctly relied on an Order Restricting Future Filings in summarily dismissing Petitioner’s sixth and seventh applications for PCR for failing to comply with the Order where Petitioner failed to pay the filing fee or submit an affidavit as the Order required.**

PCR actions are governed by “usual rules of civil procedure” Leamon, 363 S.C. at 434, 611 S.E.2d at 495 (citing S.C. Code Ann. § 17-27-80). “The [PCR] court may grant a motion by either party for summary disposition of the 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.” S.C. Code Ann. § 17-27-70. Rule 11, SCRCF, permits the circuit court, on motion or *sua sponte*, to issue an appropriate sanction where a litigant fails to comply with the rule. Rule 11, SCRCF, provides that the signature of a party certifies that he has good ground to support a pleading.

Respondent notes Judge Hayes filed the Order restricting Future Filings on April 3, 2012. (Supp. App. pp. 1-6). Petitioner failed to appeal that Order. To the extent he attempts to do so, Petitioner may not now challenge the Order Restricting Future Filings. “Arguments raised for the first time on appeal are not preserved for [the Court’s] review.” In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) (citing Knight v. Waggoner, 359 S.C. 492, 496, 597 S.E.2d 894 896 (Ct. App. 2004).

Judge Cole correctly dismissed Petitioner’s Applications. Petitioner filed the instant PCR actions on June 4, 2013 and June 20, 2013, respectively—approximately 14 months following the issuance of the Order Restricting Future Filings. Judge Hayes’s Order Restricting Future Filings was appropriate, see e.g., In re Whitaker, 513 U.S. 1 (1994); In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), and was consistent with Rule 11, SCRCF. Petitioner neither paid the requisite filing fee, nor certified by affidavit that his sixth and seventh applications were non-

frivolous. Therefore, Judge Cole correctly dismissed Petitioner's applications pursuant to the Order Resting Future Filings.

Regardless, Petitioner's current allegations are without merit. The applications that are the subject of this Petition are his sixth and seventh Applications for PCR in the Circuit Court for the Seventh Judicial Circuit. (Supp. App. p. 2). Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll 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.

S.C. Code Ann. § 17-27-90 (2014). 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, 409 S.E.2d 392 (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 an allegation could have been raised in a previous application, then the applicant may not raise it in successive applications. Id. Courts "will not engage in an exploration of why the grounds were not raised." Id. ("[I]t is sufficient that they could have been raised, but were not."). Petitioner bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Petitioner failed to set forth any reasons why he could not have raised the current

allegations in his previous post-conviction relief applications. Therefore, Petitioner's allegations are without merit.

Respondent submits 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 §17-27-10 to -160 (2014). S.C. Code Section 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). Any applicant convicted prior to the effective date of the statute was granted one year after the effective date to file an application. Id. Petitioner was convicted on March 1, 1999. Petitioner was therefore required to file his application on or before March 1, 2000. These Applications were filed on June 3, 2013, and June 20, 2013 which was well-beyond the statutory filing period had expired. Petitioner has failed to set forth any reason he should be permitted to file outside of the statute of limitations. Therefore, Petitioner's allegations are without merit pursuant to S.C. Code Ann. § 17-27-70(c).

**CONCLUSION**

For the foregoing reasons, this Court should deny the Petitioner's Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

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Attorney General

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By:   
ATTORNEYS FOR RESPONDENT

December 9, 2015.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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Certiorari to Spartanburg County  
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2014-002763

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EDDIE DEAN DOGAN, JR.,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Benjamin J. Tripp, Esquire**  
**SC Commission of Indigent Defense**  
**Appellate Defense**  
**Post Office Box 11589**  
**Columbia, SC 29211**

This 9<sup>th</sup> day of December, 2015

  
\_\_\_\_\_  
ASHLEY HAWORTH  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

December 9, 2015

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DEC - 9 2015

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

S.C. Supreme Court

**RE: Eddie Dean Dogan, Jr. v. State of South Carolina**  
**Appellate Case No.: 2014-002763**

Dear Ms. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Alicia A. Olive  
Assistant Attorney General  
SC Bar No. 102089

AAO/ah  
Enclosures

cc: Benjamin J. Tripp, Esquire