

Robert Little #273121-MA-36
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S.C. 29067

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S.C. SUPREME COURT

The Supreme Court of South Carolina
Hon. Daniel E. Shearouse, Clerk of Court
Post office Box 11330
Columbia, S.C. 29211

RE: Robert Little VS. State of South Carolina
Case No. 2012-CP-29-1177
Appellate Case No. 2015-002391

Dear, Hon. Shearouse,
Please find enclosed copy of the final order
and the conditional order.

Thanking you I am.

Your very truly
Robert Little
Robert Little #273121

State of South CAROLINA
IN the Supreme Court

APPEAL from LANCASTER COUNTY
Court of Common Pleas

Hon. Brooks P. Goldmith, Circuit Court Judge

Case No. 2012-CP-29-1177

Appellate Case No. 2015-002391

Robert Little, Applicant

S.C.D. C. 273/21

V.

The State, Respondent

CERTIFICATE OF SERVICE

I, Robert Little, hereby certify under the penalty of perjury that:

I have served upon the following address below, copy of the final order and the conditional order, to the Supreme Court and the Appeals Court and Attorney General 12 day of 3, 2015 from Kershaw Correctional mail room.



ALAN WILSON
ATTORNEY GENERAL

October 22, 2015

The Honorable Brian M. Gibbons
Chief Administrative Judge, 6th Circuit
140 Main Street
Chester, SC 29706

RE: Robert Little, #273121 v. State of South Carolina
2012-CP-29-1177

Dear Judge Gibbons:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign it and return to me in the enclosed envelope, and I will forward to the Lancaster County Clerk of Court to be filed and served. If you have any questions, please feel free to contact me.

Sincerely,

J. Croom Hunter
Assistant Attorney General

JCH/ah
Enclosures

cc: Robert Little, #273121

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2014-CP-29-1177

Robert Little, #273121,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 22, 2012. The Respondent made its Return and Motion to Dismiss, 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 March 24, 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.

In a response numbering fifty (50) pages and captioned "Opposition to Respondents Return and Motion to Amend," Applicant argues the conditional order should not become final for the following reasons:

1. Applicant alleges trial counsel failed to make contemporaneous objections.
2. Trial Counsel failed to appeal Applicant's case.
3. PCR Counsel acted improperly.
4. Applicant was not present for his initial PCR hearing.
5. Applicant's prior PCR counsel have all failed to properly present his claims.
6. Applicant claims the statute of limitations should be tolled.

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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 COURT OF COMMON PLEAS
 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

Robert Little #223121-MA-36
Kenshaw Correctional Institution
4848 Goldmine Hwy
Kenshaw, S.C. 29063



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