LYNN W. LANCASTER

November 22, 2015

2015 NOV 25 P 12:02

LAURENS COUNTY
CLERK OF COURT

To Whom It May Concern:

I am writing in regaurds to my pending PCR case. My case # 2014-CP-30-0071 was filed in 2014. I responded to a Conditional Order of Dismissal and received a stamped copy of my response from the Clerk of Court on November 17, 2014.

I wrote the office of Judge Addy in Greenwood asking abort the status of my PCR. I wrote him because he is the one who filed the Conditional Order of Dismissal. I did not receive a response from his office.

I would like to know the current status of my PCR application and if I am on the upcoming 2016 docket.

Sincerely,
Kimmie Heaton

Kimmie Heaton #249607
CGGCI BRC #8
4450 Broad River Rd.
Columbia, SC 29210

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	2015 APR 22 P 1:02
Kimmie Snipes Heaton, #249607,	)	2014-CP-30-0071
Applicant,	)	LAURENS COUNTY CLERK OF COURT
v.	)	
	)	**FINAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 21, 2014. The Respondent (the State) made its Return and Motion to Dismiss on September 4, 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, the Honorable Frank R. Addy, Jr. issued a Conditional Order of Dismissal dated September 9, 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 is an Affidavit of Service dated October 20, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Applicant's Response to Conditional Order of Dismissal," the Applicant first argues her discovery of her SCDC medical records for an unrelated reason satisfies the one-year statute of limitations under S.C. Code Ann. § 17-27-45(c). Applicant next argues this discovery of evidence satisfies the Lanier[1] test for newly discovered evidence. Additionally,

1 Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005).

#1

Applicant argues that *res judicata* is inapplicable to her case as she claims the plea court, not counsel, erred in accepting her "guilty plea from a defendant suffering from psychosis." Lastly, in Applicant Amendment to her Response to the Conditional Order of Dismissal filed January 7, 2105, Applicant avers that Jamison v State, 410 S.C. 456, 765 S.E.2d 123 (2014) further supports her claim for after-discovered evidence.

This Court has reviewed the 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.

First, the Applicant has already had a full PCR action, including an evidentiary hearing (1999-CP-30-0175). At this hearing, the Applicant must have brought all claims she had concerning her mental health. Clearly, she was able to participate in her PCR hearing as she testified coherently and thoughtfully on her own behalf. Second, Applicant has provided no evidence, specifically expert reports or affidavits, that show she was either insane at the time of her crimes or unable to assist in her own defense. While Applicant alleges her Laurens County Mental Health records, Dr. Harold Morgan's report and SCDC medical records demonstrate a sufficient doubt as to her competency, nowhere in those records does it state that Applicant was incompetent either at the time of the crime or before/at her plea. Applicant has failed to provide this Court with any evidence that she, at any time, was incompetent, so as to toll the statute of limitations.

Applicant cannot just now claim that she "discovered" these records under the meaning of S.C. Ann. Code § 17-27-45(c) (If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the

#2

applicant or **after the date when the facts could have been ascertained by the exercise of reasonable diligence)** (emphasis added). As stated in the Conditional Order of Dismissal, this information was discoverable by Applicant on May 5, 1998, when Dr. Harold Morgan sent Applicant's plea Counsel, Chip Howe, a copy of her mental evaluation (as provided in Applicant's application for PCR). Not only did she "actual[ly]" discover this in 1998, but even if she did not, she, by the exercise of reasonable diligence, certainly could have discovered this information within a year as she was clearly present during the mental evaluation. Any SCDC mental health records would be discoverable at the time they were created, and Applicant has failed to provide this Court with any SCDC medical records or the dates when they were created. Third, this Court finds the Applicant cannot satisfy the requirements of the Lanier test. These medical records would not change the outcome of the case if a new trial was granted, are not material to the issue and are merely cumulative or impeaching. Therefore, Applicant has failed to meet her burden of proving this "newly discovered evidence" meets the requirements of either S.C. Code Ann. § 17-27-45(c) or Lanier.

Fourth, Applicant argues *res judicata* is inapplicable because she alleges the court, not Counsel, erred in not ordering a competency test. While *res judicata* is arguably not applicable to a claim that the plea court erred, plea court error is an issue for direct appeal that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at her plea or on appeal. Her failure to do so has waived this allegation as a ground for relief.

#3

Fifth, while Applicant avers that Jamison, *supra*, stands in support of her claim of "after-discovered evidence," Applicant has failed to show that her case is "rare case" requiring a vacation in the interest of justice. Applicant has failed to present this Court with credible evidence that could not have been discovered at the time of her plea to prove that she was incompetent in any way. Therefore, this Court finds Applicant has failed to meet her burden of prove as to the after-discovered evidence" argument.

This Court also dismisses this case because it is successive to the Applicant's 1999 and 2012 cases. 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 her 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 were or 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 she could not have raised her current allegations in her previous application for post-conviction relief; therefore, she has failed to meet the burden imposed upon her. 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).

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. 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 offense(s) she challenges in this Application on May 6, 1998. The Applicant was therefore required to file her application by May 7, 1999. This Application was filed on January 21, 2014, which well after the statutory filing period had expired.

IT IS THEREFORE ORDERED that, for the reasons set forth in the reasons above, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that she 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 243, SCACR., for the procedures following the filing and service of the notice of appeal.

#5

AND IT IS SO ORDERED this 6 day of April, 2015.

Donald B. Hocker
Chief Administrative Judge
Eighth Judicial Circuit

Laurens, South Carolina.

#6