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FEB 24 2016

SC Court of Appeals

Dear Court

2-18-16

on the 7 day of December 2015 you received a letter from me, that letter had a proof of service showing the date I served the notice of appeal on Respondent. I Als Mailed you and the Respondent a New proof of service and the Court order. I am Sending a Copy of the Court order, but I dont have the proof of service, because I am in Lock up at Manchester. I have been in lock up after December 14, 2015. I have been trying to get my paper work out of my things, but I have to go throu my Counseler and he will not come down here. I have been writting him every week. I hope this order will help to move on with my Case. Thank you.

Willie D. Damm
P.O. Box 4000
Manchester, Ky 40962

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Wilford Drummond #16804-171,)
)
)
Petitioner,)
)
)
v.)
)
)
State of South Carolina,)
)
)
Respondent.)

IN THE COURT OF COMMON PLEAS FOR
THE SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1597

ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS

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This matter comes before the Court pursuant to the Petition for Writ of Habeas Corpus, filed by Wilford Drummond (Petitioner) on April 1, 2013. Respondent filed a Return and Motion to Dismiss, requesting that this Court dismiss the application as improperly filed and because it fails to support the requested relief.

PROCEDURAL HISTORY

Petitioner was indicted at the August 1999 Term of the Spartanburg County Grand Jury for Distribution of Crack Cocaine (1999-GS-42-4562). On April 12, 2001, Petitioner appeared *pro se* before the Honorable John C. Few and pled guilty upon the State's recommendation to Distribution of Powder Cocaine. He was sentenced to confinement for two years suspended to two years of probation and a \$500 fine. On March 20, 2003, a warrant was issued to Petitioner for violating his probation for failing to pay and positive urine screens. On April 22, 2003, a citation was issued for failing to remain arrest free. On April 23, 2003, the Honorable Edward Miller revoked the probation for one year and terminated the balance. Petitioner served his sentence from April 28, 2003, until the expiration of his sentence on December 31, 2003.

Petitioner is currently incarcerated in the Federal Bureau of Prisons on charges not challenged in this Petition.

CURRENT PETITION FOR HABEAS CORPUS

In his Petition for Habeas Corpus, Petitioner alleges that he is entitled to an issuance of a writ for the following reasons:

1. "Defendant asserts he is actual and factual innocent of the charge stemming from these indictments."
2. "Defendant asserts that his plea for the state conviction listed in this action was made voluntarily but without full understanding of the laws and principles of the plea."
3. "Defendant assert that without counsel to inform him of the consequences of the plea agreement when he plea guilty to said charge."
4. "Defendant asserts because his previous and prior state conviction, he was enhanced pursuant to 4a1.1(b) of the criminal history computation p.s.r. Without counsel during state proceeding to advise defendant that his sentence could later be enhanced by federal statue."

Before this Court are Petitioner's records from the Spartanburg County Clerk of Court concerning the subject guilty pleas; the South Carolina Department of Corrections' records; Petitioner's current and prior PCR records; Petitioner's pending federal Habeas Corpus records; Petitioner's current writ of habeas corpus; and Respondent's Return and Motion to Dismiss.¹

FINDINGS OF FACT AND CONCLUSION OF LAW

"A habeas corpus petition must support the requested relief." Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is

¹ Since this Petition was filed, Applicant has also filed an application for post-conviction relief. (2014-CP-42-0049). That application is also pending.

entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Id. PCR is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus

relief is to file a petition in the original jurisdiction of the Supreme Court.” Id.

This Court agrees with Respondent that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Additionally, Petitioner cannot file a petition in the circuit court, but must instead file in the original jurisdiction of the Supreme Court. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice.

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

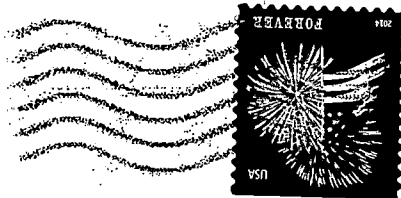
_____, South Carolina

R. KEITH KELLY
Circuit Court Judge
Seventh Judicial Circuit

NAME Wilford Drummond
REG. NO. 16804-171 QTR. SHU
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 4000
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