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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Hartford R. Best. #105214,) Case No. 2014-CP-26-116

Applicant,

COPY

CONDITIONAL ORDER
OF DISMISSAL

2015 JUL 30 PM 2:28
MELANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

v.)

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 9, 2014. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of court. In January 1981, the Horry County Grand Jury indicted Applicant for murder, armed robbery, housebreaking, and conspiracy (1981-GS-26-975). On January 17, 2018, Applicant pled guilty to murder. The Honorable Dan F. Laney Jr. sentenced Applicant to life imprisonment. Applicant did not appeal his guilty plea or sentence. Applicant did not appeal his guilty plea or sentence. Applicant filed three post-conviction relief actions¹ and a Rule 29(b), SCRCrimP, motion collaterally attacking the validity of his convictions.

On April 21, 2000, Applicant was released from custody and placed on parole. On March 15, 2007, Applicant was charged with violating the terms of his parole. On, September 12, 2007, Applicant's parole was revoked.

II. CURRENT APPLICATION

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

¹ Case Nos. 1991-CP-26-427, 1998-CP-26-2, and 2012-CP-26-3276.

1. Petitioner was not afforded minimal due process rights in regard to his September 12, 2007, parole revocation hearing because he was not "first" given a "preliminary hearing" to determine whether there was probable cause that he had committed an alleged parole violation.
 - a. Petitioner had his parole revoked on September 12, 2007, based on a pending Weapon/Sales & Deliver of a Pistol charge of which he never had been to court on nor found guilty of violating the conditions of his parole. The first two (2) parole board hearings refused to entertain the violations proceedings because no court had ruled on the charge to determine if petitioner had committed the alleged offense or was guilty of a crime for which his parole could be revoked. Due process requirements apply to parole revocations.
2. The Petitioner's parole has been unlawfully revoked based on lack of supporting evidentiary fact for the parole board to consider, to the contrary, no finding of possession of a firearm had ever been proved and petitioner's record had been expunged. (See Exh. B) Petitioner was never convicted of a state or federal weapons charge, his revocation, which is based in part upon an unverified allegation that he had possession of a firearm, should be reversed.
 - a. Petitioner, hereto submit evidence in this matter to support this claim, See Exh. B, because the fact is that his September 12, 2007, parole revocation resulted in part from parole agent Mark Harris. Arrest Warrant W-26-07-130, Indictment No. 81-GS-26-97, issued March 15, 2007. There can be no doubt that the record facts can be judicially noticed by this court. The letter from Office of the Solicitor, 15th Judicial Circuit, March 4, 2009, and Horry County Court of General Sessions - Order, March 5, 2009, Honorable Larry B. Hyman, PJ, 15th Judicial Circuit, had the charges based on the above arrest and indictment, "Dismissed." Therefore, Petitioner's parole revocation should be reversed and his parole immediately reinstated.
3. Petitioner press a claim that his restraint is illegal. Petitioner points to the fact that it has always been the law in revoking parole, as a matter of due process, consideration must be given to the law and "supported by the findings."
 - a. The facts brought out in (a) and (b) above distinguish that Petitioner is entitled to relief from the parole revocation upon which he bases his claim, "unlawfulness of the duration of confinement (illegality of restraint). Petitioner has been deprived of the fundamental right to due process for consideration must be given to the procedures used to have his parole revoked based on unverified facts and the exercise of discretion was not informed by accurate knowledge of parolee's behavior, to ascertain that he has committed acts that would constitute acts of parole violation. Thus, Petitioner challenge the fact or duration of his confinement. The State failed to appeal or petition the court on any issue pursuant to the Order of Dismissal of the above mentioned arrest.
4. Petitioner press a claim of actual innocence based upon deadman's declaration. Petitioner's co-defendant Henry Beard Delaney, (Deceased) provided sworn notarized Affidavit dated June 17, 1998, to his earlier statement on August 18, 1993, that exculpate petitioner of the crime he is currently incarcerated for. Had this statement been known at the time of petitioner's plea hearing he would not have pled guilty to the charge of murder and insisted on going to trial. (See Exh. C)
 - a. Petitioner had not committed the murder violation that he is committed to the S.C.D.C. and there is substantial reason which justify his guilty plea had been inappropriate and that substantial reasons mitigate the violation See Exh. C -

(exculpatory evidence), deceased co-defendant's dicing declaration and that reasons are complex or otherwise difficult to develop or present to produce a determination of the validity of the grounds for petitioner's actual innocence claim. Had the statement of (deceased) Henry Beard Delaney, co-defendant, been made in the course of the plea negotiation and was held to be admissible and had been introduced into evidence, petitioner may not have knowingly or voluntarily waived his rights, nor entered into the plea agreement and fairness requires that evidentiary bars do not apply to statements contemporaneously made as physical evidence.. Hereto, petitioner press a claim of actual innocence pursuant to United States Supreme Court precedent Schlup v. Delo, 115 SCt 853 (1955).

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application for as untimely.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) 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.” See also Rule 56(c), SCRCPP. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

A. Failure to Timely File

The Court finds this Application should be dismissed for Applicant’s failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

“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.”

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

Applicant’s parole revocation hearing was held on September 12, 2007. Applicant was therefore required to file his application before September 12, 2008. This application was filed on January 9,

2014, over five years after the expiration of the statute of limitations. Therefore, the Court finds summary dismissal is appropriate.

IV. CONCLUSION

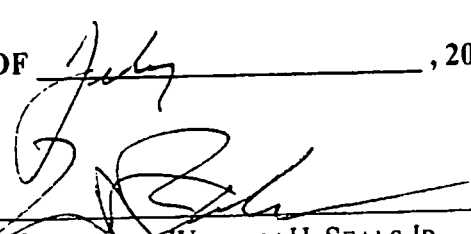
The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

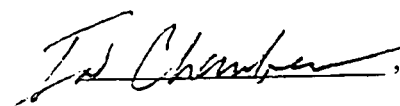
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted thirty (30) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court (PO Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 18 DAY OF July, 2015.


THE HONORABLE WILLIAM H. SEALS JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
HARTFORD R. BEST, #105214)
)
 vs)
)
STATE OF SOUTH CAROLINA,)
)
 Respondent.)
_____)


IN THE COURT OF COMMON PLEAS
2014-CP-26-116

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Conditional Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 12th day of August, 2015.



Norma Bigbee, Legal Assistant
For Respondent