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AT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
 )  
Lawrence Barrett #299823 )  
 )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS FOR  
THE NINTH JUDICIAL CIRCUIT

2015-CP-10-2766

**CONDITIONAL  
ORDER OF DISMISSAL**

FILED  
2015 AUG 27 AM 10:24  
JULIE S. ...  
CLERK OF COURT

This matter is before the Court from an application for post-conviction relief filed May 14, 2015. The Respondent made its Return and Motion to Dismiss for failure to file within the time limits mandated by the applicable statute of limitations; because it is successive; and because it fails to state a claim upon which relief can be granted under the PCR Act. This order follows.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the January 2004 term of the Charleston County Grand Jury for armed robbery (2004-GS-10-0425); and possession of a firearm during the commission of a violent crime (2004-GS-10-0426). Applicant was represented by Jason King, Esquire, and David Holston, Esquire. Applicant proceeded to trial before a jury from May 16-17, 2005, and was convicted as indicted. Applicant was sentenced by the Honorable J. Derham Cole to confinement for twenty (20) years for armed robbery and five (5) years for possession of a firearm. The sentences were set to run concurrently with one another.

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A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, of the South Carolina Office of Indigent Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant did not file a *pro se* brief. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Barrett, Op. No. 2008-UP-516 (S.C. Ct. App. filed September 9, 2008). The Remittitur was issued on September 25, 2008.

#### **First PCR Application: 2008-CP-10-6082**

Applicant subsequently filed an application for post-conviction relief on October 24, 2008, alleging the following grounds for relief:

1. Ineffective assistance of counsel;
2. Subject matter jurisdiction;
3. Due Process violation;
4. Wrong instruction(s).

Respondent made its Return on or about April 24, 2009. Applicant subsequently indicated his desire to withdraw his application. In an Order filed February 10, 2010, the Honorable Roger M. Young, Sr., concluded that the application was freely, voluntarily, and intelligently withdrawn and dismissed the matter with prejudice. Applicant did not appeal the dismissal of his application.

#### **Current PCR Application**

In his second and current application for post-conviction relief, filed May 14, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Applicant, Lawrence W. Barrett, claims that SCDC [is] denying and depriving him of his Federal and State Constitutional Right pursuant to the Fourteenth Amendment of the United States Constitution as well as Article One Section Three of the South Carolina Constitution to  Due Process and Equal Protection of Law to be punished concisely and exactly in accordance to the Honorable J. Derham Cole[']s sentencing order.
  - a. "The Applicant contends that, after a finding of guilty by a jury trial on May 18, 2005, the Honorable J. Derham Cole sentenced him to an unambiguous, vague, or unclear twenty (20) / concurrent / credit given for jail time served by

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S.C. DOC for armed robbery . . . and five (5) years / concurrent / credit given for jail time served by S.C. DOC for possession of a firearm during the commission of a violent crime . . . . The Applicant asserts that on August 2, 2014, he exhausted all available interagency remedy seeking redress from the Respondent's misinterpretation and /or erroneous failure to give credit for the "jailtime" served by S.C. DOC as specifically order [sic] by the trial court.

Before this Court are the Charleston County Clerk of Court records regarding the subject conviction, appellate records, records from Applicant's prior PCR actions, and Respondent's Return and Motion to Dismiss

### **FINDINGS OF FACT AND CONCLUSION 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. 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.

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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.”). The applicant 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).

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 Section 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, and has therefore failed to meet his burden. Further, Applicant chose to *voluntarily* withdraw all allegations in his prior PCR application, with the understanding that it would result in its dismissal with prejudice. As a result, this Court finds summary dismissal is appropriate.

#### **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. 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).

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Following Applicant's conviction and appeal of the offenses he is currently challenging, the Remittitur was issued on September 25, 2008. Therefore, Applicant was required to file this application on or before September 26, 2009. This Application was filed on May 14, 2015, which was over *five years* after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

#### **Failure to State a Claim**

This Court also finds that this Application for Post-Conviction Relief must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

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6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered *non-collateral* attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. In Cooper the petitioner made a similar claim as Applicant here, that he was not given correct credit for the time served before his conviction. The South Carolina Supreme Court in Cooper stated that PCR was improper for the petitioner because by challenging the duration of the sentence, the petitioner was trying to enforce his sentence under law and therefore *not* challenging the validity of the underlying conviction or sentence. Id. A claim for time served is a *non-collateral* attack of a conviction and must be pursued through the Administrative Procedures Act (APA). Id.

This Court finds that Applicant's allegations all concern matters which must first be raised through SCDC's disciplinary or grievance procedure. If Applicant is dissatisfied with the decision rendered by SCDC, then he may seek review of the decision under the APA. Therefore, this application must be dismissed.

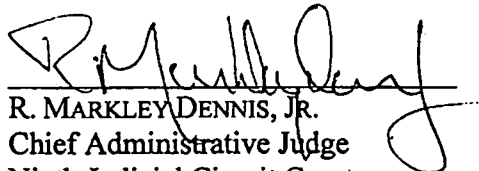
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**CONCLUSION**

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 Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Patrick L. Schmeckpeper, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 24<sup>th</sup> day of August, 20 15

  
R. MARKLEY DENNIS, JR.  
Chief Administrative Judge  
Ninth Judicial Circuit Court

Monika Turner, South Carolina