



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

Jeffrey D. Jones,
 S.C.D.C. No. 290522,

C.A. No. 2013-CP-04-1541

Applicant,

v.

State of South Carolina,

Respondent.

TRUE COPY
MAR 28 2016
Richard M. Kintner
 CLERK OF COURT

FINAL ORDER

COMMON PLEAS AND
 GENERAL SESSIONS

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FILED-CLERK'S OFFICE
 ANDERSON SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 27, 2013. The State made its Return and Motion to Dismiss requesting that the Application be summarily dismissed on August 22, 2013.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, a Conditional Order of Dismissal was signed on September 13, 2013, and filed on September 27, 2013, 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 by reference is an Affidavit of Service dated October 17, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Amended PCR Application," "on September 19, 2013, in which Applicant claims newly discovered evidence in that PCR counsel failed to conduct an investigation. In a document captioned "Applicant's Reply and Objections," Applicant argues his Due Process rights were violated by his PCR counsel's performance. Specifically, Applicant alleges PCR counsel failed to raise all of his grounds for relief because he acted under an

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undisclosed conflict of interests; and PCR counsel was ineffective because he had never practiced criminal law.

Applicant, also filed a "Motion for Retrospective Competency Hearing," on October 11, 2013 and a "Motion for Leave of Court to Invoke the Process of Discovery," on February 14, 2014.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds Applicant's claim of newly discovered evidence to be extremely vague, and that it fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. A newly discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. S.C. Code Ann. § 17-27-45(c) (2003). Applicant failed to set forth with any specificity what the evidence is, how it would have affected the outcome if used at trial, or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). This Court finds Applicant failed to make a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, is not entitled to an evidentiary hearing in the matter.

Additionally, this Court finds that Applicant's claim of ineffective assistance of PCR counsel be summarily dismissed, as it is not a cognizable claim for relief. The Sixth Amendment

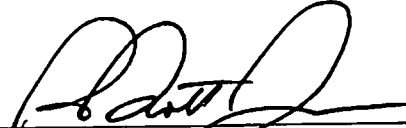
right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722 (1991). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Consequently, pursuant to Rule 12(b)(6), SCRCP, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

Furthermore, the Court denies Applicant's Motion for a Retrospective Competency Hearing and Motion for Leave of Court to Invoke the Process of Discovery as an evidentiary hearing is not being held in this matter.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15 day of March, 2016.


R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit

COMMON PLEAS AND
GENERAL SESSIONS

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Walhalla, South Carolina.

- b. "Failed to render legal assistance."
- c. "Told defendant to plea guilty."
- 2. Involuntary Guilty Plea
 - a. "Counsel manipulated and coerced defendant into plea guilty."
 - b. "Did not understand."
- 3. Constitutional Violation
 - a. "Officers manipulated and coerced statement out of defendant."

An evidentiary hearing was convened before the Honorable Alexander S. Macaulay at which Applicant was present and was represented by Victor McDade, Esq. By Order dated March 20, 2007, Judge Macaulay denied and dismissed Applicant's application. Applicant filed a notice of appeal. An appeal was perfected by M. Celia Robinson, Esquire. On July 11, 2008 the South Carolina Supreme Court transferred Applicant's case to the Court of Appeals pursuant to Rule 227(1), SCACR. The South Carolina Court of Appeals denied Applicant's petition on June 11, 2009. Applicant further filed a Petition for a Writ of Habeas Corpus in the United States District Court of South Carolina on February 16, 2010 (9:10-49-HFF-9:10-49-HFF-BM). On December 1, 2010 summary judgment was granted for the State.

2011-CP-04-1796

Applicant filed his second application for post-conviction relief on June 3, 2011.

Applicant alleged he was being held unlawfully for the following reasons:

- 1. Ineffective Assistance of Trial Counsel and PCR Counsel
 - a. Admissibility of confession/involuntary confession in that PCR counsel and trial counsel did not have mental health examination done.
- 2. Ineffective Assistance of PCR Counsel
 - a. Failure to conduct an investigation.
 - b. Failure to invoke the discovery process.
 - c. Failure to question witnesses.
 - d. Failure to abide by Rule 71.1(d).
 - e. Failure to abide by Rule 71.1(e).
 - f. Failure to argue sham legal process.
 - g. Failure to amend PCR application.
 - h. Failure to file a 59(e) or file a proposed order on behalf.

3. Involuntary Guilty Plea
 - a. Applicant was told by Judge that he will serve 85% of whatever time he imposed.
4. Subject Matter Jurisdiction
 - a. "The solicitor's failure to move to dispose of this case within 180 days from the date of defendant's arrest indicates a voluntary and intentional relinquishment of the right to do so, and upholding such waiver, this case should have been dismissed."

The Respondent made its Return and Motion to Dismiss on November 2, 2011 requesting that the application be summarily dismissed on the grounds that the application was filed outside the statute of limitations and was successive to previous applications. A Conditional Order of Dismissal dated November 17, 2011 was issued. Applicant filed a document captioned "Motion to Object/Re-Consider" on December 8, 2011. The Honorable J. Cordell Maddox, Jr. issued a Final Order of Dismissal dated February 6, 2012 on the matter.

In Applicant's current and third application for PCR, Applicant alleged he was being held unlawfully for the following reasons:

1. Subject Matter Jurisdiction.
 - a. Letter stating no grand jury documents
2. "Admissibility/Involuntary Confession."
 - a. PCR Counsel/ Trial Counsel failed to challenge statements
3. Belated Appeal
 - a. "I did not freely and voluntarily waive my appellate right to PCR Judgment."

Applicant filed an amended applicant to PCR filed July 25, 2013, alleging:

1. Subject Matter Jurisdiction.
2. Belated Appeal
 - a. Applicant did not knowingly waive his right to appellate review on case No. 2011-CP-04-1796.
3. Involuntary/ Admissibility of Confession
 - a. Conduct of police deprived Applicant of fundamental fairness guaranteed by the Due Process Clause of the Fourteenth Amendment.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR records by reference. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

This Court summarily dismisses the current Application because it is successive to the previous 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). S.C. Code Ann. § 17-27-90 (1985) states:

All 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.

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., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. 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 Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. This Court finds Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this Application is summarily dismissed because it is successive.

II.

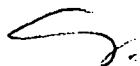
This Court summarily dismisses this Application because Applicant failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

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) he challenges in this Application on February 3, 2003. The Applicant was therefore required to file his PCR application by February 4, 2004. This Court finds that this Application was filed on June 27, 2013, over 10 years after the expiration of the filing period.

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) (1985) 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 summarily dismisses the application for failure to file within the time mandated by the Post-Conviction Procedure Act.

III.

Furthermore, this Court finds Applicant's allegations related to ineffective assistance of PCR counsel are not cognizable in this jurisdiction. The South Carolina Supreme Court has recognized an applicant does not have a Sixth Amendment guarantee to effective assistance of PCR counsel. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394. The recent decision set forth by the United States Supreme Court in Martinez v. Ryan, No. 10-1001 (U.S. March 20, 2012), has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions. In fact, in the opinion as recited in the informal slip copy, the Court specifically notes that their decision is not addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, stating "[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter." Id. Therefore, Applicant's contention that he received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to

consider in evaluating the application. See Also Kelly v. State (The Supreme Court of South Carolina, Appellate Case No. 2013-001079) (filed June 20, 2013). Accordingly, this Court summarily dismisses the allegation for a failure to state a claim entitling Applicant to relief.

IV.

This Court finds Applicant failed to prove the sentencing court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

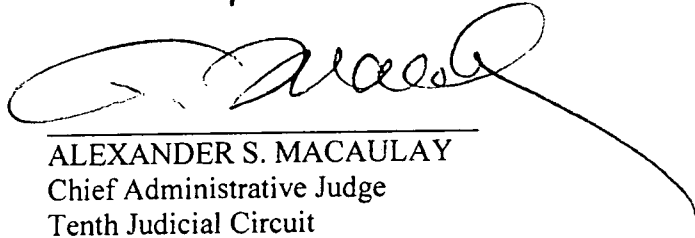
An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence

that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, this Court finds that the sentencing court had subject matter jurisdiction. Therefore, this allegation is summarily dismissed.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Anderson County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Walt Whitmire, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 13 day of September, 2013.


ALEXANDER S. MACAULAY
Chief Administrative Judge
Tenth Judicial Circuit

Walhalla, South Carolina.

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