



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

APR - 9 2012

GENERAL COUNSEL

*Perry*

April 6, 2012

David M. Tatarsky, General Counsel  
South Carolina Department of Corrections  
4444 Broad River Road  
Columbia SC 29221-1787

**Re: Patrick P. Bryant, #215212 v. State of South Carolina**  
**2011-CP-22-897**

Dear Mr. Tatarsky:

Enclosed please find the **Conditional Order of Dismissal** dismissing the above-captioned inmate post-conviction relief application. Please serve the inmate, Patrick P. Bryant, #215212 with the order and provide me with the affidavit of service (enclosed).

If you have any questions, please feel free to call: (803) 734-3737.

Sincerely,

Christina J. Catoe  
Assistant Attorney General

CJC/nb  
Enclosures

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )  
Patrick P. Bryant, # 215212, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-22-00897

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
GEORGETOWN COUNTY, S.C.  
2012 APR - 8 PM 3:16  
ALMA WHITE  
CLERK OF COURT

This matter comes before the Court by way of an Application for post-conviction relief filed July 12, 2011, by Patrick P. Bryant. Respondent made a Return and Motion to Dismiss dated August 10, 2011, requesting that the Application be summarily dismissed. Incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the conviction and the Applicant's prior post-conviction relief file (2010-CP-22-00727), which is on file with the clerk of court.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Georgetown County. The Applicant was indicted in March 2006 for criminal sexual conduct ("CSC") in the first degree (2006-GS-22-267). The Applicant was later indicted in July 2007 for CSC with a minor in the second degree (2007-GS-22-667). J. Eric Fox, Esquire, represented the Applicant on these charges. On July 23-26, 2007, the Applicant was tried before the Honorable J. Michael Baxley. The jury found him guilty of second-degree CSC with a minor, and not guilty of first-degree CSC. Judge Baxley sentenced the Applicant to life without parole ("LWOP") pursuant to S.C. Code Ann. § 17-25-45. A notice of appeal was timely filed, and an appeal was perfected on the Applicant's behalf by Kathrine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed the conviction on January 21, 2010 (2010-UP-006), and the case was remitted to the circuit court on February 8, 2010.

The Applicant filed his first Application for PCR regarding this conviction on May 4, 2010. The State made a Return dated June 21, 2010. An evidentiary hearing was convened on November 16, 2010, and an order denying relief was issued on December 2, 2010. A timely notice of appeal was filed, and the matter is currently pending before the South Carolina Supreme Court. The Office of Appellate Defense represents the Applicant in this appeal.

Allegations and Relief Sought

In his current Application, Mr. Bryant alleges that his custody is unlawful for the following reasons:

- (1) Was not indicted by grand jury – the grand jury’s schedule reflects that it did not convene on the day that is indicated on the indictment; and
- (2) PCR attorney ineffective for failing to bring matter to the attention of the court.

He states he is seeking “immediate release.”

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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:

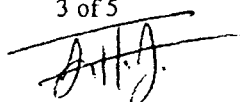
This Court finds that the PCR Application must be summarily dismissed because it is procedurally barred. First, it is impermissibly successive to the first Application. The Uniform Post Conviction Procedure Act provides that:

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, 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 (2003). Successive applications are disfavored and the burden is on Applicant to establish that he could not have raised any new ground raised in a subsequent application in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Applicant could have raised allegation #1, the grand jury issue, in his previous PCR case. See Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*. In any event, the Applicant's allegation that he was not indicted by the grand jury is without merit. Initially, this Court notes that the Applicant admits in his pleadings that he was indicted in July 2007. See Applicant's "Post-Conviction Relief Brief," page 1. In addition, his indictment, number 2007-GS-22-667, is stamped "True Bill" and was signed by Georgetown County Grand Jury foreman on July 18, 2007. "Absent evidence to the contrary, . . . the regularity and legality of proceedings before a grand jury is presumed." State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996). Whether the "grand jury schedule" referenced by the Applicant (but not attached to his PCR Application) indicates that the grand jury met on July 18, 2007 is not conclusive because orders issued each year by the Chief Justice of the South Carolina Supreme Court grant the chief administrative judge of each judicial circuit the authority to, after consultation with the solicitor, schedule particular terms for the grand jury every six months *and* to convene the grand jury at other times during the six-month period as the public interest may necessitate. Accordingly, unless, in response to this Conditional Order of Dismissal, the Applicant sets forth compelling reasons and/or evidence suggesting that there is reason to doubt the authenticity of the "true bill" and signature of the grand jury foreman on his indictment, this Court will conclude in a Final Order of Dismissal that

A handwritten signature in black ink, appearing to be "A.H.J.", written over a horizontal line.

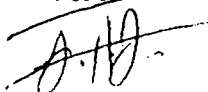
the Applicant's allegation that he was not indicted by the grand jury is without merit as a matter of law.

The Applicant's second allegation is that he received ineffective assistance of PCR counsel because PCR counsel failed to raise the grand jury issue discussed above at the Applicant's first PCR proceeding. First, for the reasons discussed above, this contention is without merit. Second, this contention does not set forth a valid claim for relief, since PCR applications are used to raise *constitutional* violations regarding a *conviction*. See Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) ("PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the *validity* of his *conviction or sentence*." ) (emphasis added). Further, ineffective assistance of PCR counsel is not currently a recognized claim in South Carolina absent a claim of failure to file an appeal from a PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). See Aice v. State, *supra* ("[A]s long as it was *possible* to raise [an] argument in [the] first PCR application, an applicant may not raise it in a successive application." ) (emphasis added); see also Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (pointing out that there is no constitutional right to counsel in post-conviction relief). Therefore, this claim must be summarily dismissed.

The Application must also be 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 (Supp. 2003). 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 applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The



Applicant in this case was convicted in July 2007. However, this Application was not filed until July 12, 2011. Therefore, it must be dismissed as barred by the statute of limitations.

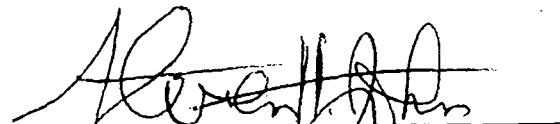
A motion for summary judgment may properly be used to raise a statute of limitations defense. See RWE Nukem Corp. v. ENSR Corp., 73 S.C. 190, 194, 644 S.E.2d 730, 732 (2007). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition 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." This Court finds that the Application must be summarily dismissed for the reasons discussed above.

### CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to **DISMISS** this Application for post-conviction relief with prejudice unless the Applicant provides specific reasons, factual or legal, why the action should not be dismissed in its entirety. The Applicant is granted **TWENTY (20) DAYS** from the date of service of this Order to show why the conditional dismissal should not become final. The Applicant shall file any reasons he may have with the Georgetown County Clerk of Court and shall serve the Respondent using the following address:

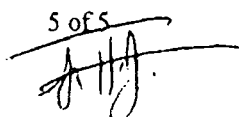
Office of the Attorney General  
Attn: Christina J. Catoe (PCR)  
P.O. Box 11549  
Columbia, SC 29211

AND, IT IS SO ORDERED this 22<sup>nd</sup> day of March, 2012.



The Honorable Steven H. John  
Chief Administrative Judge  
Fifteenth Judicial Circuit

Conroy, South Carolina

5 of 5  


SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRPC, the Director of the South Carolina Department of Corrections has designated Off. M. Sisk (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA ) AFFIDAVIT OF PERSONAL SERVICE  
COUNTY OF )

On this 12<sup>th</sup> day of April, 2012, I served the signed **Conditional Order of Dismissal** on **Inmate Patrick P. Bryant No. 215212**, by delivering personally and leaving a copy of the same at **Perry Correctional Institution**, Pelzer, South Carolina. Deponent is not a party to this action.

s/ Off. M. Sisk  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 12<sup>th</sup> day of April, 2012  
[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: 11-26-2020

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, **Perry Correctional Institution, Pelzer, SC**, **Greenville** County, South Carolina, this 12<sup>th</sup> day of April, 2012.

s/ Patrick P. Bryant  
Inmate Signature  
SCDC No. 215212

PATRICK P. BRYANT, 215212  
PERRY CORRECTIONAL INST  
430 OAKLAWN ROAD  
Q 2.A.108 PELZER SC  
29669

THE SUPREME COURT OF SOUTH CAROLINA  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

OCTOBER 17, 2012

DEAR MR SHEAROUSE,

HERE IS A COPY OF THE CONDITIONAL ORDER  
OF DISMISSAL DATED 4/4/12.

**RECEIVED**

OCT 22 2012

S.C. SUPREME COURT

Patrick Bryant