

The State of South Carolina
In The Court of Appeals

Appeal From Laurens County
Court of Common Pleas

Eugene C. Griffith Jr. Circuit Court Judge

Case No. 2013-CP-30-0471

Eddie Dendy, SEDC

Appellant

No. 233366

V.

State of South Carolina

Respondent

LAURENS COUNTY
CLERK OF COURT

2013 DEC 23 A 11:25

YANN W LANCASTER

Notice of Appeal

Eddie Dendy, Appeals the Final Order of Dismissal of the Honorable Eugene C. Griffith Jr., dated October 29, 2013. Appellant recieved written notice of entry of this Order on December 13, 2013.

Eddie Dendy

Eddie Dendy # 233366

J. Rutledge Johnson

Assistant Attorney General

S.C. Attorney General's Office

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The State of South Carolina
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Appeal From Laurens County
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NA 233366

LAURENS COUNTY
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Appellant

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LYNN W. LANCASTER

v.

STATE of South Carolina

Respondant

Proof of Service

I certify that I have served the Notice of Appeal on the State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, December 20, 2013 addressed to the attorney of record as follows.

December 20, 2013

Eddie Dendy
386 Redemption Way
McCormick, SC 29889

Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

unpublished opinion. State v. Dendy, Op No. 97-MO-104 (S.C. Sup. Ct. filed October 29, 1997).

The Remittitur was issued on November 19, 1997.

1998-CP-36-0360

The Applicant then filed an application for post-conviction relief on October 29, 1998. The Respondent filed its Return on February 12, 1999. An evidentiary hearing was convened on September 22, 1999, at the Newberry County Courthouse. The Petitioner raised the following issues in his first PCR:

1. "Ineffective assistance of counsel"
2. "Denial of Due Process"
3. "Court was without jurisdiction to impose sentence"

The Applicant was present and represented by Lawrence W. Crane, Esquire. The Honorable Rodney A. Peeples denied and dismissed the Petitioner's PCR application by written Order on November 21, 1999.

The Applicant subsequently appealed this dismissal by filing a Petition for a Writ of Certiorari with the South Carolina Supreme Court. The Supreme Court denied the Petition on January 8, 2003. The Remittitur was issued on January 27, 2003.

9:04-2-13BG

On January 8, 2004, Petitioner filed a Writ of Habeas Corpus in the Federal District Court for the District of South Carolina. The Honorable G. Ross Anderson, Jr., dismissed the Writ of Habeas Corpus by a signed order on November 10, 2004.

2007-CP-30-0105

The Applicant then filed a "Petition for Writ of Habeas Corpus" on February 14, 2007 in Laurens County. In his petition for Habeas Corpus, Petitioner alleges that he is entitled to an issuance of a writ for the following reasons:

1. "Counsel was ineffective at Petitioner's guilty plea hearing, which rendered the plea not knowingly and voluntarily made in light of the broken promise of a plea to voluntary manslaughter."
2. "Trial Counsel was ineffective for failing to obtain the written report of the mental evaluation prior to the guilty plea."

The State made its Return and Motion to Dismiss on or about April 4, 2007. A hearing was held on November 5, 2007, at the Newberry County Courthouse. M. Rita Metts, Esquire. The Honorable William P. Keesley denied and dismissed the Applicant's State Habeas by written Order on January 4, 2008.

The Applicant thereafter appealed the denial of his State Habeas. The South Carolina Court of Appeals dismissed the appeal by written Order on April 2, 2008. The Remittitur was issued on April 23, 2008.

2009-CP-30-0423

The Applicant then filed a second application for PCR on March 30, 2009 and an amended application on April 23, 2009. In his original application for PCR, Petitioner alleged that he is being held in custody unlawfully for the following reasons:

1. "The applicant was denied Due Process and Equal Protection of law under the 6th, 5th, 14th Amendments to the United States Constitution, as well as the South Carolina Constitution's Article I sec. 3"

2. "Applicant's 6th, 5th, 14th, Amendments to the United States Constitution, as well as Rule 82(b) of SCRPC"

In his amended application for PCR, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. "The Applicant contends that his court appointed counsel conspired along with the prosecutor to manipulate and coerce him to plead guilty to Murder and Grand Larceny and be deprived of life, liberty, and property without Due Process of Law of Article One section eleven of the State and Federal Constitution(s); because the Newberry County Circuit Court did not have Subject Matter Jurisdiction to try, convict, or sentence him"
2. "The Applicant contends that his court appointed counsel was deficient for allowing him to plead guilty to Murder and Grand Larceny after being deprived of Due Process of Law by an unlawfully change of venue from Laurens County to Newberry County. Counsel convinced applicant to go to trial court one month earlier. Counsel also allowed solicitor to withdraw plea negotiations and intimidate applicant into pleading guilty."

The State made its Return and Motion to Dismiss on or about December 20, 2011. This Court issued a Conditional Order of Dismissal on January 5, 2012. The Applicant did not file a response to this Order. On March 2, 2012, this Court filed a Final Order of Dismissal.

In his current application for PCR, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Denial of Effective Assistance of Counsel"
2. "Denial of Due Process/And Newly Discovered Evidence"
3. "The Court was without Jurisdiction to impose sentence"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. S.C. Code Ann.

§17-27-90 provides that:

All grounds for relief available to an application 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 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

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 S.C. Code § 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; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court also 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 . 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 judgement 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 April 16, 1996. The Remittitur from the Applicant's unsuccessful appeal was issued on November 17, 1997. The Applicant was therefore required to file his application by November 18, 1998. This Application was filed on June 13, 2013, which is well after the statutory filing period had expired.

A motion for summary judgement 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) (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 judgement as a matter of law."

This Court further finds the Applicant cannot satisfy the requirements of the Lanier test for newly discovered evidence. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. The Applicant has failed to properly allege newly discovered evidence that would entitle him to a belated PCR action.

This Court lastly finds that the current application for post-conviction relief must be

summarily dismissed because the doctrine of *res judicata* bars the Applicant's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

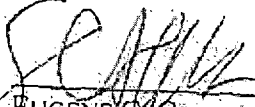
The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in his 2001 PCR action and in his pending Federal Habeas Corpus action. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court summarily dismisses these claims as barred by *res judicata*.

Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for being successive, for failure to file within the time mandated by statute, for failing to properly allege newly discovered evidence, and for being barred by *res judicata*.

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

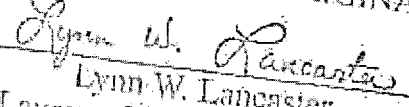
Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 16th day of August, 2013.


EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCOP & GS

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) LYNN W. LANCASTER) EIGHTH JUDICIAL CIRCUIT

2013 NOV - 7) A 9:36

Eddie Dendy, #233366.

2013-CP-30-0471

LAURENS COUNTY)
Applicant)
CLERK OF COURT)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 13, 2013. The Respondent (the State) made its Return and Motion to Dismiss on August 1, 2013, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated August 6, 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 is an Affidavit of Service dated September 26, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Motion in Opposition Conditional Order of Dismissal," the Applicant argues the plea court was without jurisdiction when it accepted his 1996 guilty plea in Newberry County when the charges arose in Laurens County. He also alleges he was only represented by one attorney for a death penalty case. This Court has reviewed the Applicant's response to the State's

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motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

First, according to the records provided by the Applicant and attached to his Motion in Opposition of the Conditional Order of Dismissal, the Applicant's counsel, after fully discussing waiver of venue with the Applicant, waived any challenge to improper venue. *See Plea Transcript p. 4 lines 1-20*. This waiver allowed the plea court proper venue to accept the guilty plea in Newberry County.

Second, according to the same transcript, the Applicant was clearly represented by two attorneys as required by S.C. Code Ann. §16-3-26. Attorneys Steve Welch and Rita Metts represented the Applicant, and but for Ms. Metts having a conflict on the day the Applicant pled guilty, she would have been in attendance at the plea hearing.

Additionally, in order to properly challenge these convictions, the Applicant must have filed his application with the statute of limitations.

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 April 16, 1996. The Remittitur from the Applicant's unsuccessful appeal was issued on November 17, 1997. The Applicant was therefore required to file his application by November 18, 1998. This Application

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was filed on June 13, 2013, which is well after the statutory filing period had expired. The Applicant has provided no sufficient reason why he failed to file his application within the statute of limitations.

Further, this Court finds that the doctrine of *res judicata* bars the Petitioner's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel in both the state and federal courts. Specifically, the Applicant raised improper venue/court lacked jurisdiction in his 1997 and 2009 PCR applications. The Applicant continues to raise the same meritless claims by repeated collateral attacks on his convictions. The lack of two attorneys argument presents an allegation that could have been raised in those prior proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismissed these claims as barred by *res judicata*.

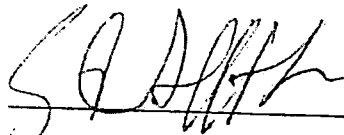
Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final. This Court also finds an evidentiary hearing is unnecessary to decide this case.

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.

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This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The 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 29th day of October, 2013.



Eugene C. Griffith, Jr.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina.

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

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

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated L.T. McCurry (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)
COUNTY OF McCormick

AFFIDAVIT OF PERSONAL SERVICE

On this 26th day of September, 2013, I served the signed Conditional Order of Dismissal on Inmate Eddie Dendy, SCDC Inmate No. 233366 by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick, South Carolina. Deponent is not a party to this action.

s/ L.T. McCurry
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 26 day of September, 2013,
J. Franke (L.S.)
Notary Public for South Carolina

My Commission Expires: 12-16-2019

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, McCormick, McCormick County, South Carolina, this 26th day of September, 2013.

s/ Eddie Dendy
Inmate Signature
SCDC No. 233366

List case number here
2013-CP-30-0471