

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Anthony Maurice Lounds,)
 S.C.D.C. No. 227456,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2015-CP-23-4911

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 MAR 9 10 4 32

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 7, 2015. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for armed robbery (2009-GS-23-10155, count 1) and possession of a weapon during commission of a violent crime (2009-GS-23-10155, count 2). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of life imprisonment without parole for armed robbery and 5 years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Lounds, Op. No. 2013-UP-289 (S.C. Ct. App. filed June 26, 2013). The remittitur was sent on July 17, 2013.

The Applicant filed a PCR application on August 2, 2013 (2013-CP-23-4178). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to function as the State's adversary.
 - b. Failed to call witnesses.
 - c. Failed to investigate.
 - d. Failed to offer defense to the court.
 - e. Failed to subject the prosecution's case to adversarial testing.

In a pro se "Amendment to PCR Application" filed on September 17, 2013 (and prior to appointment of PCR counsel), the Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to "communicate with the Applicant to adequately prepare for life without parole trial."
 - b. Failed to challenge the Applicant's arrest.
 - c. "[N]ever intended to offer any defense to the court on my behalf."
 - d. Failed to "function as the governments adversary."
 - e. Failed to "conscientiously gather any information to protect my rights."
 - f. Failed to "conscientiously discharge his professional responsibilities."
 - g. Failed to "make proper arguement concerning the seating of jury #40 peremptory challenge."

An evidentiary hearing was convened on October 21, 2014 at the Greenville County Courthouse. R. Mills Ariail, Jr., Esquire represented the Applicant. The Honorable Letitia H. Verdin denied and dismissed the PCR application by order filed December 19, 2014.



The Applicant filed a notice of appeal. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari on September 18, 2015 and the Respondent filed a return to that petition on January 4, 2016. The matter is currently pending before the South Carolina Supreme Court.

II.

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

1. Ineffective assistance of trial counsel.
 - a. "Trial counsel failed to object to alternate juror deliberating while jury considered verdict."
2. Newly-discovered evidence.
 - a. Transcript was incomplete.

In a "Notice and Motion to Amendment to PCR Application" filed October 13, 2015, the Applicant makes the following additional allegations:

1. After-discovered evidence.
2. Ineffective assistance of appellate counsel.
 - a. Failed "to check record, review record."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 Applicant was convicted of the offenses he challenges in this application on July 13, 2011,



the South Carolina Court of Appeals affirmed on June 26, 2013, and the remittitur was sent on July 17, 2013. The Applicant was therefore required to file his application before July 17, 2014. This application was filed on August 7, 2015, which was more than 1 year after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392,

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394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

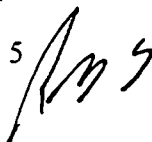
This Court notes the Applicant has alleged newly- or after-discovered evidence. This Court finds this allegation is without merit. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). This Court finds the Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the “new evidence” offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. This allegation is dismissed.

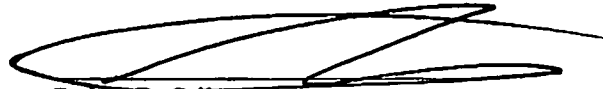
VI.

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,

5


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 Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8 day of MAR, 2016.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.