(6)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WATTS, MARCUS L.,

Applicant,

V.

State of South Carolina,

Respondent.

2015-CP-23-4235

NOTICE OF APPEAL

Notice is hereby given that Marcus L. Watts, applicant in the above named case, hereby appeals to the South Carolina Court of Appeals from the final order entered in this action on the 26th day of September, 2016.

Dated: 10/25/16

s/ Marcus L. Watts

Marcus L. Watts
SCDC # 316590
P.C.I.
430 Oak Lawn Rd.
Pelzer, SC 29669

RECEIVED
OCT 28 2016
SC Court of Appeals

RECEIVED
OCT 31 2016
S.C. SUPREME COURT

Dear Clerk,

Please find enclosed my Notice of Appeal and a copy of the final order from the lower court. Please clock-stamp and send me a copy back.

Peace,

s/ Marcus L. Walt

RECEIVED
OCT 28 2016
SC Court of Appeals

RECEIVED
OCT 31 2016
S.C. SUPREME COURT

cover sheet/Letter

ATTS, MARCUS L. #316590
CI
elzer, SC 29669
30 Oak Lawn Rd., Q4A207

RECEIVED
OCT 28 2016
SC Court of Appeals

Jms

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
OCT 25 2016
PCI Mailroom

LEGAL MAIL

RECEIVED
OCT 31 2016
S.C. SUPREME COURT

(5)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Marcus L. Watts,
S.C.D.C. No. 316590

Applicant,

v.

State of South Carolina,

Respondent.

2015-CP-23-4235

FINAL ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 SEP 26 PM 2 50

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 1, 2015. Respondent made its Return and Motion to Dismiss on May 11, 2016, 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 filed June 6, 2016, 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 June 22, 2016.

Applicant made no response to the Conditional Order of Dismissal within the twenty (20) day response period. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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 advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 7th day of Sept, 2016.

PERRY H. GRAVELY
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2015CP2304235

Marcus Leeotis Watts *vs.* South Carolina State of

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Marcus Leeotis Watts Perry Correctional Institute
430 Oaklawn Rd Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Marcus L. Watts, S.C.D.C. No. #316590, Applicant, v. State of South Carolina, Respondent.	)	2015-CP-23-4235 **CONDITIONAL ORDER OF DISMISSAL**

In response to the post-conviction relief application filed July 1, 2015, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the November 2006 term of the Greenville County Grand Jury for murder (2006-GS-23-10014, count 1), possession of a weapon during the commission of a violent crime (2006-GS-23-10014, count 2), grand larceny (2006-GS-23-10015), and first-degree burglary (2006-GS-23-10016). C. Timothy Sullivan, Esquire represented the Applicant.

On February 5, 2007 the Applicant pled guilty. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of thirty-five (35) years imprisonment for murder, five (5) years for possession of a weapon during the commission of a violent crime, five (5) years for grand larceny, and twenty-five (25) years for first-degree burglary. The Applicant did not

appeal.

2008-CP-23-5360

The Applicant filed an application for post-conviction relief (PCR) on July 18, 2008 (2008-CP-23-5360). In his application the Applicant alleged his continued incarceration was unlawful for the following reasons:

1. Ineffective assistance of counsel.
    a. Attorney was undergoing surgery during investigation.
    b. Failed to receive mental evaluation before trial.
2. "Adverse judgement and opinion formed beforehand w/o knowledge of the facts."

An evidentiary hearing was convened on May 15, 2009 at the Greenville County Courthouse. The Applicant was present and represented by Rodney W. Richey, Esquire. By Order filed June 30, 2009 the Honorable J. Mark Hayes, II denied and dismissed the application.

The Applicant filed a notice of appeal. The South Carolina Supreme Court require the Applicant, pursuant to Rule 243(c), SCACR, to show an arguable reason why the denial of his application was improper. In an Order dated September 10, 2009 the Supreme Court found the Applicant failed to meet his burden and dismissed the appeal. The Remittitur was sent on September 28, 2009.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (6:12-1211-JFA-KFM). This matter currently pending in the United States Court of Appeals for the Fourth Judicial Circuit.

2012-CP-23-3345

The Applicant subsequently filed a second PCR application on May 17, 2012. In that

application the Applicant claimed he continued incarceration was unlawful for the following reasons:

1. "He tell me one thing, and when it comes out, it's another. When they appoint you a lawyer, well he don't really take full interest in the case anyway, just to get you out of the way."
2. "I thought only a 30-year sentence would result from a guilty plea instead of the concurrent 35-year sentence, so the plea was involuntary."
3. "I was represented by ineffective counsel."

The Respondent made its return and motion to dismiss on or about September 11, 2012. The Honorable G. Edward Welmaker signed a Conditional Order of Dismissal on September 19, 2012. It was filed on September 24, 2012. By Final Order dated January 14, 2013 and filed January 23, 2013 Judge Welmaker denied and dismissed the application with prejudice.

The Applicant filed a notice of appeal on January 24, 2013. By Order dated March 29, 2013 the South Carolina Supreme Court dismissed the appeal pursuant to Rule 243(c), SCACR. The Remittitur was sent on April 16, 2013.

2013-CP-23-5498

The Applicant filed a third PCR application on October 10, 2013, alleging that his continued incarceration was unlawfully for the following reasons:

1. "Inadequate assistance of counsel."
   a. "Newly discovered evidence under Martinez v. Ryan, Slip Op. (March 20, 2012)."

The Respondent made its return and motion to dismiss on or about March 11, 2014, requesting the matter be summarily dismissed. Pursuant to this request, the Honorable Letitia H. Verdin issued a Conditional Order of Dismissal signed March 13, 2014, and filed April 3, 2014, provisionally dismissing the matter and giving Applicant twenty (20) days with which to respond. Following Applicant's response, Judge Verdin issued a Final Order signed July 16,

2014, and filed July 22, 2014, dismissing the matter with prejudice.

Applicant filed a Notice of Appeal. By Order filed March 29, 2013, the Supreme Court dismissed Applicant's appeal for failure to show an arguable basis for asserting that the determination by the lower court was improper. The Remittitur was issued on April 16, 2013.

II.

In his current application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

1. Subject Matter Jurisdiction issue (raise at any time)
   a. Court lacked jurisdiction due to indictments being presented and true billed in civil court of common pleas instead of criminal court of general sessions.
2. Bad/Faulty Indictments
   a. State v. McClure; Sanders v. State; State v. Parker; State v. Gunn; Henders v. Morgan.
3. Ineffective Counsel
   a. S.C. Code Ann. §§ 14-9-170; 14-9-210; 17-19-10; 17-29-80; 17-1-170; Art. 1 § 11, S.C. Cosnt; Art. 5 § 22, S.C. Const; State v. Rector.

Before this Court are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant's prior PCR records, the Applicant's records from the South Carolina Department of Corrections and the Applicant's current PCR application.

III.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications 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 applications 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).

IV.

This Court finds, further, 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 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 he challenges in this Application on February 5, 2007. This Application was filed on July 1, 2015, which was well 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 v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). 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 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.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to deficiencies in the indictment. 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 is not implicated by deficiencies in the indictment. See Gentry, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

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, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. This allegation is therefore summarily dismissed with prejudice.

[*Signature follows*]

VI.

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

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

AND IT IS SO ORDERED this 29 day of Nov, 2016

ROBIN B. STILWELL
Chief Administrative Judge
Thirteenth Judicial Circuit Court

Greenville, South Carolina

WATTS, MARCUS L. #316590
PCI
Pelzer, SC 29669
430 Oak Lawn Rd., Q4A207

RECEIVED
OCT 28 2016
SC Court of Appeals

Jms

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
OCT 25 2016
PCI Mailroom

LEGAL MAIL