

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4001089

Vincent #271530 Boseman

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 (formal order to follow) Statement of Judgment by the Court.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Vincent #271530 Boseman

James Clayton Mitchell III

Vincent #271530 Boseman

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette M. McBride

JEANETTE M. MCBRIDE
 C.P. & G.
 2015 OCT 29 PM 2:49
 FILED
 RICHLAND COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vincent J. Boseman, #271530,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-01089

CONDITIONAL ORDER OF DISMISSAL

JEANETTE W. McBRIDE
S.C.P. & G.S.
2014 OCT 29 PM 12:48

RICHLAND COUNTY
FILED

This matter comes before this Court by way of an application for post-conviction relief filed February 21, 2014.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the March 1997 term of the Richland County Grand Jury for Armed Robbery (1997-GS-40-20555). He was also indicted in November 1998 for Assault of a High and Aggravated Nature and Resisting Arrest (98-GS-40-36645). Applicant was represented on the charges by Beattie Butler and Ian Deysach, Esquires. A jury trial on the charges was held December 4-7, 2000, before the Honorable James C. Williams, Jr. The jury convicted Applicant as charged. Judge Williams, pursuant to S.C. Code Ann. § 17-25-45 (2003), sentenced Applicant to life without the possibility of parole for the Armed Robbery conviction, ten (10) years confinement, concurrent for Assault of a High and Aggravated Nature, and one (1) year confinement for Resisting Arrest. Applicant appealed his convictions and sentence.

The South Carolina Court of Appeals reversed the conviction and remanded for a new trial upon finding that the trial judge erred in replacing jurors instead of beginning the jury

selection process anew after ruling Applicant had violated Batson v. Kentucky, 476 U.S. 79 (1986). State v. Vincent Boseman, Op. No. 03-UP-096 (S.C. Ct. App. filed February 4, 2003).

A second jury trial was held July 28-31, 2003, before the Honorable J. Mark Hayes, III. Douglas S. Stickler represented Applicant. The jury convicted Applicant of Armed Robbery, Resisting Arrest, and the lesser included offense of Simple Assault. Judge Hayes sentenced Applicant, pursuant to the state recidivist statute to life without parole for Armed Robbery, one (1) year confinement, concurrent, for Resisting Arrest, and thirty (30) days confinement for simple assault.

Applicant then appealed his convictions and sentence. Assistant Appellate Defender Tara S. Taggart represented Applicant in his appeal. Counsel filed a Final Brief of Appellant in the South Carolina Court of Appeals on December 20, 2004, and raised the following issue:

1. Whether the trial judge erred in "incorporating by reference" the pre-trial proceedings, including rulings, in appellant's previous trial on the same charges.

The South Carolina Court of Appeals issued an unpublished opinion affirming the conviction. State v. Vincent Boseman, Op. No. 2005-UP-305 (S.C. Ct. App. filed May 5, 2005). Appellate counsel filed a petition for rehearing on May 20, 2005, that was denied on June 22, 2005. Appellate counsel then filed a petition for writ of certiorari in the Supreme Court of South Carolina on September 21, 2005. The state made its return to the petition on September 27, 2005. The South Carolina Supreme Court denied the petition on November 2, 2006. The remittitur was issued on November 2, 2006.

2006-CP-40-07055

Applicant subsequently filed an application for post-conviction relief on November 28, 2006, where he alleged he was being held unlawfully for the following reasons:

1. Failed to object to the state using rule 4 (B), SCRCrimP to preclude me having hearing;
2. Ineffective Assistance of Counsel did not challenge the rulings of the court;
3. The withdrawal of his objection to incorporating previously hearing and rulings in new trial.

Respondent filed its Return on or about May 8, 2007. An evidentiary hearing was convened on April 28, 2008, at the Richland County Courthouse. Applicant was present and represented by counsel Tara D. Shurling, Esquire. The State was represented by Assistant Attorney General Brian T. Petrano. Applicant testified on his own behalf. Also testifying was Applicant's former trial counsel, Mr. Johnson. On July 21, 2008, the Honorable G. Thomas Cooper issued an Order of Dismissal denying relief and finding that the issues raised by Applicant were without merit.

Counsel then filed a Rule 59(e), SCRCP, Motion to Alter or Amend on August 7, 2008. The State filed a return and moved to dismiss the post-trial motion on August 11, 2008. Judge Cooper denied Applicant's motion on November 5, 2008.

Applicant then appealed the decision made by the PCR court and filed a timely notice of appeal. Applicant was represented by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense. Counsel filed a Johnson¹ petition for writ of certiorari on Applicant's behalf on or about April 13, 2009, raising the following issues:

1. Whether defense counsel was ineffective in failing to object to Howard Smith's testimony concerning his out-of-court identification of petitioner?

Counsel also petitioned to be relieved as counsel. On March 10, 2010, the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. Applicant did not file a *pro se* brief. The South Carolina Court of Appeals denied the petition for review on August 16, 2011, and issued the remittitur on September 1, 2011.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

2011-CP-40-05982

Applicant then filed a second application for post-conviction relief on September 9, 2011, where he raised the following issues:

1. Trial counsel filed to object and preserve issues for appellate review;
2. P.C.R. Counsel did not adequately and/or accurately raised issues;
3. When post conviction relief application was filed I had not assistance of counsel.

The State made its Return and Motion to Dismiss the application as successive and untimely on September 23, 2011. A signed Conditional Order of Dismissal was signed by the Honorable James R. Barber III on June 28, 2012 and filed with the clerk on July 5, 2012, provisionally denying and dismissing the action while giving Applicant thirty (30) days from the date of service of said order in which to show why the dismissal should not become final. Applicant made no response to the Conditional Order of Dismissal and a Final Order was signed by Judge Barber on November 15, 2012.

2011-cv-03265-TLW

Applicant then filed a petition for writ of habeas corpus on December 1, 2011, in federal district court. Petitioner raised the following issues:

1. Trial counsel was ineffective for failing to object to state using rule 4(b) SCrcrimP to prevent me to reargue issues that had been rule. . .
2. Counsel ineffective for Failing to object and/or Preserving issues for collateral review.

On March 28, 2012, the Respondent filed a return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated October 31, 2012, finding that Applicant's claims were without merit.

2012-CP-40-07277

Applicant then filed a third application for post-conviction relief on October 29, 2012, where he raised the following issues:

1. Ineffective assistance of trial counsel,
 - a. Counsel failed to find a witness Wendy Reed AKA (Boosie).
 - b. Failed to allow applicant to confront witness against him. Witness Carl Holmes testified in first trial but not the second trial.
 - c. Failed to serve ten day notice to seek life w/o parole pursuant to S.C. 17-25-45.
2. Ineffective assistance of P.C.R. counsel,
 - a. Failed to argue why the transcript should not be incorporated into record.
3. Prosecutorial bad faith.

The State made its Return and Motion to Dismiss on January 29, 2013, requesting that the application be summarily dismissed as exceeding the one year statute of limitations and as successive. Pursuant to this request, the court issued a Conditional Order of Dismissal dated February 12, 2013, provisionally denying and dismissing the action. The court gave Applicant twenty (20) days from the date of service of said order to respond as to why the case should not be dismissed. The Honorable L. Casey Manning signed an order of dismissal on September 17, 2013, denying relief.

Applicant appealed the denial of relief by filing a notice of appeal on October 23, 2013. The South Carolina Supreme Court issued an order on December 18, 2013, dismissing the appeal as Applicant failed to show that there was an arguable basis for asserting that the determination by the lower court was improper. The remittitur was issued on January 3, 2014.

CURRENT APPLICATION

ad In his ~~second~~ ^{fourth} and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutor introduced trial testimony that it knew or should have known was perjured.

2. Prosecutor violated Applicant's right to fair trial (Due Process)(6Amend).
3. Concealed and/or suppressed evidence favorable to defendant.
4. The Applicant obtained a sworn declaration that Carl Holmes written to inv. Bob Benson.
5. Applicant was not afforded opportunity to question Carl Holmes at new trial.
6. There's 2 statement in case files Carl Holmes written 2.15.97.

Before this Court are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. 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.

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 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).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also 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, et. seq. 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 found guilty of the offenses he challenges on December 7, 2000. The remittitur from Applicant's direct appeal was issued on November 2, 2006, so he was therefore required to file his application on or before November 5, 2007. This application was filed on February 21, 2014, which was over six (6) years after the statutory filing period had expired.

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) (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." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

III. CONCLUSION

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

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 27th day of October, 2014.


~~L. Casey Manning~~
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina