

JANUARY 11, 2017

The Honorable Jenny Abbott Kitchen
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED

JAN 20 2017
SC Court of Appeals

RE: Caitlin B Hastings, Attorney
for respondent v. Emilio R. Edwards
Appellant, Case No. 2015-CP-HZ-1080

Dear Mr. Kitchen:

Enclosed of service of notice appeal on the respondent.

Proof of service of the notice of appeal on the respondent.

A copy of the order.

Sincerely,
Emilio R. Edwards
Emilio R. Edwards
Livesay B. Corr. Inst
P.O. Box 580
Union, S.C. 29378

cc: M. Hope Blackley, clerk of
Court, Post Office Box 3483
Spartanburg South Carolina 29304-3483

NOTICE OF APPEAL IN CIVIL CASE

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL
IN THE SUPREME COURT

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JAN 20 2017

APPEAL FROM SPARTANBURG COUNTY SC Court of Appeals

COURT OF COMMON PLEAS

ROGER L. COUCH, Circuit Court Judge

RECEIVED

JAN 24 2017

CASE NO. 2015-CP-42-1080

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

Respondent.

v

Emilio R. Edwards, # 324270

Appellant.

NOTICE OF APPEAL

Emilio R. Edwards appeal the order of the Honorable ROGER L. Couch dated December 30, 2016. Appellant received written notice of this order January 11, 2017.

Emilio Edwards

Emilio R. Edwards # 324270
Appellant.

Other Counsel of Record
Caitlin B. Hastings
Attorney for Respondent
S.C. Attorney General's Office
P.O. Box 11549
Post-Corrections Relief Section
Columbia, S.C. 29211

RECEIVED

JAN 24 2017

S.C. SUPREME COURT

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court

RECEIVED

JAN 20 2017

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
ROGER L. COUCH, Circuit Court Judge

CASE NO. 2015-CP-42-1080

STATE OF SOUTH CAROLINA

Respondent.

V.

Emilio R. Edwards, 329270

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Caitlin B. Hastings, by depositing a copy of it in the United States Mail, postage prepaid on January 11, 2017, address to Caitlin B. Hastings, S.C. Attorney General's Office, P.O. Box 11549, Post-Conviction Relief Section, Columbia, S.C. 29211

JANUARY 11, 2017

Emilio Edwards
Emilio R. Edwards
Livesay B. Corr. Inst
P.O. Box 580
CWA, S.C. 29378

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Emilio R. Edwards, #329270,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-1080

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 17, 2015. The Respondent made its return on September 14, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, and for failure to make a prima facie showing with regards to his subject matter jurisdiction and newly discovered evidence claims that Applicant is entitled to relief.

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 signed September 23, 2015, and filed September 28, 2015, 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 October 15, 2015, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion Objecting to State Motion to Dismiss and Return" and filed on September 29, 2015, Applicant argues that he deserves a hearing based upon his subject matter jurisdiction and newly discovered evidence claims.

EC

In a document captioned "Final Order" and filed on October 12, 2015, Applicant argues that the failure to transcribe his June 18, 2010, guilty plea transcript until August 14, 2014, is the basis for his newly discovered evidence claim.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty and was sentenced on June 18, 2010. As this action was filed on March 17, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case in his first PCR application (2013-CP-42-1915). See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

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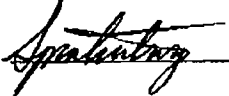
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises 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. 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 30th day of December, 2016.



ROGER L. COUCH
Circuit Court Judge
Seventh Judicial Circuit

, South Carolina.

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ALAN WILSON
ATTORNEY GENERAL

December 14, 2016

The Honorable Roger L. Couch
Presiding Judge, 7th Circuit
P.O. Box 2614
Spartanburg, SC 29304-1744

Re: Emilio Rabasa Edwards v. State of South Carolina
2015-CP-42-1080

Dear Judge Couch:

Enclosed please find an original proposed **Final Order of Dismissal** in the above-captioned case. The Honorable J. Mark Hayes, II, Chief Judge for Administrative Purposes for the Seventh Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013, any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Hayes' stead. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review. If this Order meets your approval, please sign and forward to the Spartanburg County Clerk of Court to be filed and served in the enclosed envelope.

Sincerely,

Caitlin B. Hastings
Assistant Attorney General

CBH/ah
Enclosures

cc: Emilio Rabasa Edwards, #329270

2016 DEC 30 PM 1:13

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-1080

Emilio Rabasa Edwards #329270,

Applicant,

v.

State of South Carolina,

Respondent.

**CONDITIONAL
ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on March 17, 2015. Respondent made its Return requesting that the application be summarily dismissed because it is successive; for failure to file within the time period mandated by the statute of limitations; and for failure to make a prima facie showing with regards to his subject matter jurisdiction and newly discovered evidence claims that Applicant is entitled to relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for Traffic/Hit and Run with a Death (2008-GS-42-3643). He was represented by Andrea Price, Esquire. On June 18, 2010, the Applicant pled guilty to the charges as indicted. The Honorable J. Mark Hayes, II, sentenced Applicant to fifteen (15) years provided that upon the service of ten (10) years the

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balance is suspended with probation for five (5) years. Applicant did not appeal his guilty plea or sentence.

First PCR Application (2013-CP-42-1915)

In his first application, filed April 23, 2013, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. "Agreement violated,"
 - a. "Upon Aug. 18, 2012. I was told that my sentence changed. Lost Parole eligibility due to the change. Agreement in court has been violated do [sic] to change."

Respondent made its Return and Motion to Dismiss on or about February 20, 2014, requesting the matter be summarily dismissed. Pursuant to this request, the Honorable J. Derham Cole issued a Conditional Order of Dismissal filed March 12, 2014, provisionally denying and dismissing the action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Following Applicant's response, the Honorable R. Keith Kelly issued a Final Order, filed May 15, 2015, denying and dismissing the matter with prejudice. Applicant did not appeal.

Current Application

Applicant filed his second and current application for post-conviction relief on March 17, 2015, alleging he is being held in custody unlawfully for the following reasons:

1. Guilty plea was not knowingly, voluntarily, and intelligently made;
2. Ineffective assistance of counsel;
 - a. Failure to investigate;
 - b. Failure to pursue a defense available to Applicant;
 - c. Failure to properly advise Applicant of the plea;
3. Lack of subject matter jurisdiction.
 - a. Jurisdiction can be raised at any time including the first time on PCR.
 - i. Court lacked jurisdiction over the plea when the indictment and warrant stated ...¹

¹ This Court was unable to locate the remainder of Applicant's attachment.

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CLERK OF SUPERIOR COURT
STATE OF NEW YORK

Applicant filed an amended application on May 26, 2015, in which he raised the following allegations:

1. Denied Due Process;
 - a. Applicant's plea was not knowing, voluntary, or intelligent;
 - i. Applicant was not aware of the nature and crucial elements of the offense, neither the maximum and mandatory minimum penalty, and nature of the constitutional rights be waived.
2. Trial Judge never informed Applicant that he had the right to appeal within ten (10) days after plea
3. Ineffective assistance of counsel; specifically
 - a. Counsel was ineffective for failing to discuss the implications of the guilty plea, what Constitutional rights he [would] be waiving;
 - b. Counsel failed to pursue a defense available to the Applicant, a lesser included offense of the charge;
 - c. Counsel was ineffective for not properly advising Applicant of the charge against him;
4. Newly Discovered Evidence:
 - a. Counsel was ineffective for improperly advising Applicant that he would be parole eligible after serving one fourth of his time;
 - b. Counsel failed to inform Applicant that he wasn't the only vehicle that hit and run the pedestrian.

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

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) (2003), the Court makes the following findings of fact and conclusions of law:

Successiveness

This Court finds Applicant's current application must be summarily dismissed because it is successive to his previous applications for post-conviction relief. Successive applications for

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SPARTANBURG COUNTY

post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll 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.

S.C. Code Ann. Section 17-27-90 (2014). As a result, 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, 409 S.E.2d 392 (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. at 450, 409 S.E.2d at 394. 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. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised each of the grounds for relief alleged in this application in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this Court finds summary dismissal of the application is appropriate because it is successive.

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SOUTH CAROLINA

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Statute of Limitations

This Court further finds that this Application for post-conviction relief should 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 to -160 (2014). Section 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 pled guilty to the offense he challenges in this application on June 18, 2010. The Applicant was therefore required to file his application on or before June 19, 2011. This application was filed on March 17, 2015, which was over three (3) years 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 (2005). In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.

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Subject Matter Jurisdiction

Applicant's claim that the court lacked subject matter jurisdiction should similarly be dismissed. Applicant's jurisdictional claim appears to be based on the fact defects in the indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). 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 it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90. A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90.

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. Therefore, the applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. This Court finds that Applicant's

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COURT OF APPEALS

conviction involved a criminal charge in General Sessions Court, and that the circuit court therefore had proper subject matter jurisdiction.

Newly Discovered Evidence

Finally, this Court finds Applicant's claim for newly discovered evidence must be summarily dismissed because it fails to make a prima facie case that Applicant is entitled to relief. Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

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In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. 165 S.E.2d at 130. Applicant's claims of newly discovered evidence fails on both prongs, to the point that it does not present a prima facie claim for relief – nor does it sufficiently or clearly present a "rare case" requiring a vacation in the interest of justice. Neither of Applicant's claims asserts the existence of actual new *evidence*, but instead each raises legal claims unsupported by any factual allegations.² Before the circuit court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make such a showing, this application must be dismissed.

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² Respondent notes that the issue concerning his parole eligibility was previously raised in his prior application, and Applicant has failed to allege sufficient facts to bring him into compliance with the discovery rule. As a result, this claim is also barred by the statute of limitations. SUPRA, Sections III and IV.

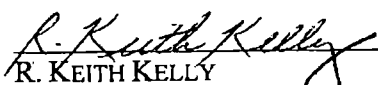
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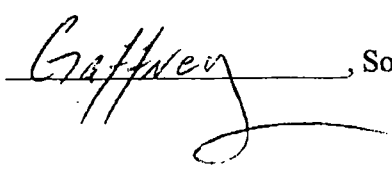
CONCLUSION

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

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

AND IT IS SO ORDERED this 23rd day of September, 2015.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit Court

, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2015 SEP 28 AM 9:47
M. HOWE BLANKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court
9-29-15

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Emilio Roberto Edwards
Applicant # 329270

7TH JUDICIAL CIRCUIT

CASE # 2015CPA 1080

State vs
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Conditional Obj. Dismissal
In this action dated 9-23, 2015 on 9-29-15

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Emilio Edwards
Emilio Edwards

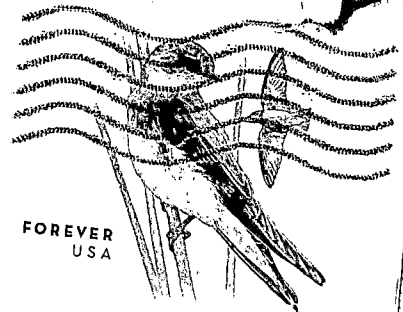
9-29-15
(Date)

Lois Eef
(Signature)

EMILIO EDWARDS
LIVESAY B PO BOX 580
6-16B 329270
UNA SC 29378

GREENVILLE SC 296

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USA

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SC Court of Appeals

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