

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

2015-CP-32-1219

Anne Louise Gordon,
S.C.D.C. No. 323003)

CONDITIONAL ORDER OF DISMISSAL

v.)

State of South Carolina)

Defendant.)

FILED
JUL 18 11:41
BETH A. CATHROGG
CLERK OF COURT
LEXINGTON, SC

This matter comes before the court by way of an application for post-conviction relief filed by Anne Louise Gordon (Applicant) on April 6, 2015 ("the Application"). Respondent made its Return, requesting the Application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the Lexington County Grand Jury during the March 2006 term for the crimes of murder (2006-GS-32-686), arson in the second degree (2006-GS-32-687), and armed robbery (2006-GS-32-688). Applicant was subsequently indicted by the Lexington County Grand Jury during the June 2007 term for additional charges of murder (2007-GS-32-1984), arson in the second degree (2007-GS-32-1989), and armed robbery (2007-GS-32-1985). Cameron B. Littlejohn, Esquire, and Joshua Kendrick, Esquire, represented Applicant on the charges. On July 13, 2007, Applicant entered a plea of guilty to the crimes as indicted before the Honorable William P. Keesley. On July 17, 2007, the Honorable Edward B. Cottingham sentenced Applicant to a term of life imprisonment without the possibility of parole.



Applicant filed a timely notice of appeal. Applicant was represented by Robert M. Dudek, Esquire. By letter dated December 21, 2007, Applicant filed through counsel an affidavit indicating her desire to abandon her direct appeal. On January 14, 2008, the Court of Appeals accordingly filed an order of dismissal and remittitur.

2008-CP-32-1722

Applicant filed her first Application for Post-Conviction Relief on April 24, 2008 (2008-CP-32-1722), alleging:

1. Ineffective Assistance of Counsel
 - a. Failure to pursue violation of right to speedy trial claim
2. Involuntary Guilty Plea

Respondent made its return on or about September 11, 2008. An evidentiary hearing into the matter was convened on May 18, 2010, before the Honorable Alexander S. Macaulay. Applicant was present at the hearing and was represented by Joseph Epting Jr., Esquire. A. West Lee, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Macaulay denied and dismissed that application for PCR in an Order dated July 23, 2010.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Wanda Carter, Esquire filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court relegated the matter to the South Carolina Court of Appeals, which granted counsel's petition to be relieved and denied Applicant's petition by unpublished opinion. Gordon v. State, S.C. Ct. App. Order dated Oct. 8, 2012. The Remittitur issued on October 25, 2012.



1:13-2069-RMG-SVH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on July 23, 2013¹ (C.A. No. 1:13-2069-GRA-SVH). In her Petition, Applicant set forth the following grounds for relief:

1. "I was not given a Speedy Trial Within 180 days after I requested one in writing to the Prosecution. I was denied Equal Protection guaranteed in the U.S. Constitution because South Carolina allows other defendants to receive a speedy trial within 180 days after the request on in writing pursuant to the Interstate Agreement on Detainer's Act, S.C. Code Ann. § 17-11-10.

Respondent filed its Return and Motion for Summary Judgment on September 27, 2013. The Honorable Shiva V. Hodges, United States Magistrate Judge, issued on November 19, 2013 a Report and Recommendation that Respondent's motion for summary judgment be granted. The Honorable Richard Mark Gergel, United States District Judge, accepted the Report and Recommendation for summary judgment and denied Applicant's Petition by Order dated December 12, 2013. Gordon v. Warden of Graham Correctional Inst., No. 1:13-CV-2069-RMG, 2013 WL 6512640 (D.S.C. Dec. 12, 2013). Applicant did not appeal.

II. CURRENT APPLICATION

In her second and current post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "14th Amendment U.S.C.A."
 - a. "Denied right to a jury trial (Forced)"
 - b. "Atty. Told me to plead guilty because I was present, codefendent [sic] statement implicating me as accomplice"
2. "Entrapment | hearsay evidence"
3. "Actual [sic] innocent"

Applicant requests relief as follows:

¹ The exact date of service was disputed by the parties, but the dispute was immaterial to the Court's ruling.

- “A Fast and speedy jury trial”
- “To use hypnosis as my defense”

Respondent incorporates the Lexington County Clerk of Court records, the final order of Applicant's previous PCR with its appellate documents, the final order from the federal habeas corpus action, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds the Application must 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. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

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). 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) 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.”

The Applicant pled guilty on July 13, 2007 and the remittitur from direct appeals issued on January 14, 2008. The current application was not filed until April 6, 2015 – well after the



one-year statutory filing period expired. Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

Successive

The Court also finds the Application must be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 indicate 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. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why she could not have raised her current allegations in her previous applications for post-conviction relief. Therefore, she has failed to meet the burden imposed upon her.

Thus, the Court shall summarily dismiss the Application as successive to Applicant's previous PCR application.

Res Judicata

The Court finds the Application is similarly barred by the doctrine of *res judicata*. *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.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Applicant had a full opportunity to litigate all her allegations in her prior actions. Applicant's allegations with respect to the right to a speedy trial, the 14th Amendment to the United States Constitution, and whether her guilty plea was knowing and voluntary were already raised and considered in both her previous PCR and federal habeas corpus actions. The finality of the previous Court rulings should be respected and the Court shall summarily dismiss the Application as barred by the doctrine of *res judicata*.



Actual Innocence Claims after a Guilty Plea

The Court further finds that Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, especially where the Applicant pled guilty. The Applicant waived her right to raise innocence as a defense when she pled guilty and waived her right to a jury trial. Therefore, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

Insufficient evidence of guilt is not a valid claim to overturn a guilty plea conviction. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6); *see also* State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) (quoting U.S. v. Broce, 488 U.S. 563, 569 (1989)) ("[W]hen the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.")

For these reasons and pursuant to Rule 12(b)(6), SCRPC, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.


CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. 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. Applicant shall file any reasons she may have with the Lexington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Johnny E. James, Jr., Esquire
Post-Conviction Relief Division
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that her response to this order must be actually received by the Lexington County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in her response if not so timely filed and served.

AND IT IS SO ORDERED this 9 day of July, 2016.


R. KNOX MCMAHON
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

FILED
2016 JUL 18 AM 11:47
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP3201219

Anne Louise Gordon
 #323003

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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 JUDGMENT 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 (List amount(s) below)

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

7/20/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on July 20, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Anne Louise Gordon #323003 Graham Correctional
Institution 4450 Broad River Road Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

Johnny Ellis James Jr. PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
