

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Thomas Harley, #162293,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-38-0800

**FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 23, 2014. Respondent made its return on or about March 3, 2016, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive PCR applications.

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 March 7, 2016 and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service in which to show why the dismissal should not become final. Subsequently, an Amended Conditional Order of Dismissal was signed June 23, 2016 and filed July 7, 2016. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated May 4, 2016 and August 2, 2016, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a *pro se* response captioned "Applicant Motion in Objection to the Conditional Order of Dismissal," dated March 15, 2016, in which Applicant argues trial court lacked subject matter jurisdiction.

Applicant, in a filing dated June 21, 2016 and titled, "Motion Objection Amended Conditional Order of Dismissal," asserts that the grounds for relief sought in the current application were not asserted or were inadequately raised in the original application.

Applicant also filed a document titled "Applicant Motion in Objection to the Amended Conditional Order of Dismissal," dated August 8, 2016, in which Applicant argues ineffective assistance of PCR counsel for failure to raise the issue that the court lacked subject matter jurisdiction.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their 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 finds that Applicant's subject matter jurisdiction challenge is without merit. An applicant may 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, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); 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. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction over Applicant's case and this allegation is without merit.

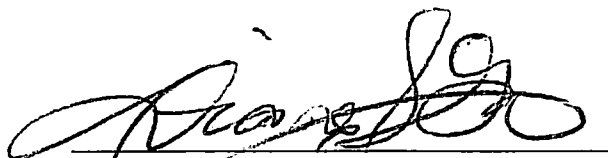
This Court finds that Applicant's claims of ineffective assistance of PCR counsel are not cognizable claims for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant

obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Consequently, pursuant to Rule 12(b)(6), SCRCF, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

**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 27 day of February, 2017.



Diane S. Goodstein  
Chief Administrative Judge  
First Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Thomas Harley, #162293,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-38-00800

**AMENDED  
CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed June 23, 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 Orangeburg County. The Applicant was indicted at the May 1989 term of the Orangeburg County Grand Jury for Murder (1989 GS-38-613). He was represented on the charges by Reddick A. Bowman, Jr., Esquire. On August 2, 1989, the Applicant proceeded to a trial by jury on the charges and was found guilty as indicted. He was sentenced by the Honorable John Hamilton Smith to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was filed. The South Carolina Supreme Court dismissed the Applicant's appeal. State v. Harley. Op. No. 90-MO-318 (S.C. Supreme Court filed December 14, 1990).

**1991-CP-38-530**

The Applicant subsequently filed his first application for post-conviction relief (PCR) on July 15, 1991. An evidentiary hearing was convened on December 17, 1991 at the Orangeburg County Courthouse at which the Applicant was present and represented by Carl Grant, Esquire. The Honorable Julius H. Baggett denied and dismissed the Applicant's application by written

Order on February 13, 1992. The Applicant did not appeal the denial of his first PCR application.

**1999-CP-38-610**

The Applicant filed a second Application for post-conviction relief on June 21, 1999. The Applicant raised the following issues in his second PCR application:

1. Ineffective assistance of trial counsel, appellate counsel, and PCR counsel;
2. Court error.

An evidentiary hearing was convened on April 12, 2000 at the Carl Knight Law Enforcement Center in Summerville. The Applicant was present at the hearing and represented by Eugene Ott, Esquire. The Honorable Diane S. Goodstien denied and dismissed the Applicant's application by written Order on July 3, 2000. The Applicant did not timely appeal the denial of his second PCR application. The South Carolina Supreme Court dismissed the Applicant's petition for a writ of certiorari on the denial of his second PCR application on April 5, 2001.

**2004-CP-38-746**

Applicant filed a third Application for post-conviction relief on May 12, 2004, alleging that he was being held in custody unlawfully for the following reasons:

1. Trial court lacked subject matter jurisdiction;
2. Ineffective assistance of trial counsel.

Respondent filed their Return and a Motion to Dismiss on October 13, 2004. An evidentiary hearing was convened on January 18, 2006 at the Orangeburg County Courthouse. Judge Lee S. Alford dismissed the petition on March 21, 2006 because it was successive, time barred, and the trial court had subject matter jurisdiction to hear the case.

**3:02-1341-25BC**

Applicant filed a *pro se* petition for a writ of habeas corpus in the federal district court on April 18, 2002. Respondent filed a motion for summary judgment on June 20, 2002, to which the

Applicant responded on July 12, 2002. On November 6, 2002, the Honorable Terry L. Wooten dismissed Applicant's petition. Applicant appealed and the dismissal was affirmed by the Fourth Circuit Court of Appeals.

**3:10-cv-2296-RBH**

On November 6, 2007, the Applicant filed a "Petition for a Extraordinary Writ" (3:02-1341-TLW) in the United State District Court which the court construed as a petition for federal habeas relief (3:10-cv-2296-RBH). On November 12, 2010, after reviewing the Report and Recommendation of the United States Magistrate Judge Joseph R. McCrorey, to which the Applicant did not object, the court adopted the recommendation, dismissed the petition and denied the Applicant a certificate of appealability because he had failed to make a substantial showing of the denial of a constitutional right. The Applicant appealed this denial to the Fourth Circuit Court of Appeals. On March 18, 2011, the court denied a certificate of appealability and dismissed the appeal because Applicant had failed to object to the magistrate judge's report and recommendation.

**Appeal No. 13-456**

On October 29, 2013, Applicant filed a motion for an order authorizing the United States Fourth Circuit Court of Appeals to consider a second or successive application for habeas relief. The court denied the motion on December 20, 2013.

**5:14-2829-RBH-PJG**

The Applicant filed an action pursuant to 42 U.S.C. § 1983 in the United States District Court along with motions for a temporary restraining order and a preliminary injunction against defendant Winnifa B. Clark, the Orangeburg County Clerk of Court. The action was filed in regards to the filing of the current PCR application, and the Applicant alleged that the Clerk of

Court had failed to file his documents. Applicant subsequently filed two motions to amend his complaint to add the State of South Carolina and Attorney General Alan Wilson as named Defendants. He filed a motion for default judgment and a motion for declaratory judgment. On November 25, 2014, the court denied the motions and dismissed the complaint.

### CURRENT APPLICATION

In his fourth and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons verbatim:

1. The court lacked subject matter jurisdiction of the crime accused.
2. Civil rights of state/fed. R of court, of civil procedure & crim. Law of ineff. Assistance of counsel.
3. Rule #(35)
4. Rule #(37)
5. #(1) Pre-trial matter
6. Rule #(2) preliminary hearing,
7. "Arrest Process"§ 17-13-50 Right to be inform of ground of arrest.
8. § 17-13-140 Issuance execution & return of search warrant for property co-acted with the commission of a crime. Inventory of property seized
9. § 17-30-150 person served with a search warrant shall be furnished a copy of warrant an supporting affidavits, "indictment"
10. § 17-19-10 offenses shall be prosecuted upon grand jury indictment
11. § 17-19-20 Allegation sufficient for indictment.
12. § 17-19-90 Objections to defects in indictment. Order for competency-Evaluation & criminal responsibility.
13. § 17-24-20(A) under form S.C.C.A./221.
14. § 19-7-10 Clerk shall subpoena witness.
15. § 19-7-60 Process to compel, attendance of criminal witnesses.
16. § 19-11-10 Competency of witnesses.
17. "Defense of indigents." § 17-13-10 Person entitled to counsel shall be so advised when counsel shall be provided.
18. To advise me I could refrain from testifying in compelled me to do so involuntarily call as a witness against myself, when I did not want to.
19. Trial counsel Bowman, whom made a untruthful statement against me representing me of the trial proceeding in a court law being tried.
20. Failed to object to inferred malice from a deadly weapon.
21. Failed to advise me I could participate in the jury selection, failed to strike a juror under probable cause.
22. Failed to file for a direct appeal on my behalf.

23. Failed to communicate with me & did not have a opportunity to explain that I had two (2) specific defense witnesses to call, an that I have a hearing impairment & needs appropriate sufficient assistance to have a fair & impartial jury trial.
24. Failed to afford me pre-trial brief #(6).
25. Failed to conscientiously discharge his professional responsibility to applicant.

Before this Court are the records of the Orangeburg 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 applications 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 convicted of the offenses he challenges on August 2, 1989. The Applicant was therefore required to file his application before **July 1, 1996**. This application was filed on June 23, 2014, which was nearly eighteen (18) 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

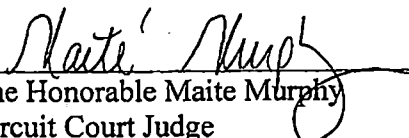
pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

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

Office of the Attorney General  
J. Clayton Mitchell, Esquire  
PCR Division – 1<sup>st</sup> Circuit  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 23 day of June, 2016.

  
The Honorable Maite Murphy  
Circuit Court Judge  
First Judicial Circuit

St. George, South Carolina