

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

KENNETH JAMES #261378
Petitioner,
V.
STATE OF SOUTH CAROLINA
Respondent.

IN THE SOUTH CAROLINA
SUPREME COURT

2015-CP-40-05186

MOTION AND NOTICE OF APPEAL

I, Kenneth James #261378, hereby appeal the decision of the PCR
Court of the dismissal of my PCR application, filed March 3, 2017.

Respectfully submitted,

April 3, 2017.
Kershaw, South Carolina

Kenneth James-----
Petitioner,
Kenneth James #261378
K.C.I. H.C.114
4848 Goldmine Hwy.
Kershaw, S.C. 29067

RECEIVED
APR 06 2017
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE SOUTH CAROLINA
SUPREME COURT

RECEIVED

KENNETH JAMES #261378
Petitioner,

2015-CP-40-05186 APR 06 2017

V.

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
Respondent.

Re: Timeline To File And Serve
Notice Of Appeal

The Final Order Of Dismissal that I received stated that:

"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."

The Order was dated March 1, 2017, and it was filed, March 3, 2017. However, my institutional mailroom received the Order on March 13, 2017 (see, attachment), and called for me to sign for and receive it on March 14, 2017. Therefore, my thirty (30) days to file and serve a Notice of Appeal would start on the day I actually received the Order on March 14, 2017.

WHEREFORE, I respectfully contend that I have filed and served my Notice of Appeal within the required timeline.

Respectfully submitted,

Kenneth James
Petitioner,
Kenneth James #261378
K.C.I H.C.114
4848 Goldmine Hwy.
Kershaw, S.C. 29067

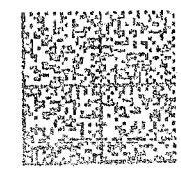
April 3, 2017
Kershaw, South Carolina

Jeanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O. Box 2766
Columbia, SC 29202-2766

RECEIVED
APR 06 2017
S.C. SUPREME COURT

Kenneth #261378 James
Kershaw Correctional Institution
4348 Goldmine Hwy
Kershaw, SC 29067

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kenneth James, #261378,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-05186

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2017 MAR -3 AM 9:23
JEREMY L. ...
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 25, 2015. Respondent made its Return on or about May 17, 2016, requesting that the Application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR application and raises an issue not cognizable in PCR.

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 May 20, 2016 and filed May 23, 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 9, 2016, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Response to Return and Motion to Dismiss," on June 16, 2016, in which Applicant argues his current allegations were not raised or were not properly raised in the previous application because of PCR court errors, PCR counsel's errors and statute violations arose at and after the Applicant's first PCR hearing.

This Court has reviewed all pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Applicant still fails to present any reason that this application should be reviewed despite its being filed after the expiration of the statute of limitations.

Applicant argues that Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309 (2012), entitles him to have the Court examine his 2000 conviction and his prior PCR counsel's conduct regarding his prior conviction. This Court finds that Martinez has no bearing on Applicant's ability to raise ineffective assistance of counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, in Martinez, the United States Supreme Court held that "[w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Id. at 1320. See Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013) (expressly adopting this holding in South Carolina). Concerning state court, the Supreme Court of South Carolina has recognized that "the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Id. Consequently, Applicant's contention that he received ineffective assistance of prior 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. See id.

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 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 1 day of March, 2017.



DEANDREA G. BENJAMIN
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2015CP4005186

Kenneth #261378 James

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. Dismissal); 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 _____

2015 MAR 3 AM 9:33
 JUDGE: _____
 CLERK: _____
 COUNTY: _____

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
		\$
		\$
		\$

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 3 day of Mar, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth #261378 James

Jessica Elizabeth Kinard

Kenneth #261378 James
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

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

CASE NUMBER: 2015CP4005186

Kenneth #261378 James

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 _____

SEARCHED
SERIALIZED
INDEXED
FILED
2016 MAY 3 AM 3:32
RICHLAND COUNTY

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
		\$
		\$
		\$

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 24 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth #261378 James

James Clayton Mitchell III

Kenneth #261378 James

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kenneth James, #261378,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-05186

CONDITIONAL ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2016 MAY 23 PM 3:32
JENNIFER L. TORRES
C. CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed August 25, 2015.

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 August 1999 term of the Richland County Grand Jury for two counts of Armed Robbery, Assault and Battery With Intent to Kill, two counts of Possession of Firearm or Knife During Commission of or Attempt to Commit Violent Crime, two counts of Kidnapping, and Criminal Sexual Conduct in the first degree (1999-GS-40-19023; -19103; -19104; -19105; -19107; -19108; 19109; -19110). Applicant was represented on the charges by Douglas Strickler, Esquire and Rob Sneed, Esquire. A jury trial on the charges was held in September 1999 before the Honorable Costa M. Pleicones. The jury convicted Applicant as charged. On September 24, 1999, Judge Pleicones sentenced Applicant to thirty years for the criminal sexual conduct charge, and a consecutive sentence of ten years confinement for one count of armed robbery. All other sentences were to run concurrent to these charges. Applicant appealed his convictions and sentence.

The Applicant was represented on appeal by Senior Assistant Appellate Defender Wanda H. Haile of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal and affirmed the convictions on March 21, 2001. Remittitur was issued on April 4, 2001.

2001-CP-40-03298

Applicant subsequently filed an application for post-conviction relief on August 8, 2001, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Ineffective assistance of appellate counsel;
3. Violation of due process: speedy trial.

The State filed its Return on March 26, 2002. An evidentiary hearing was convened on April 28, 2003, at the Richland County Courthouse. Applicant was present and represented by counsel T. Andrew Johnson, Esquire. The Respondent was represented by J. Hagood Hamilton, Jr., Esquire, of the South Carolina Attorney General's Office. Applicant testified on his own behalf. Also testifying was Applicant's former trial attorneys, Mr. Strickler and Mr. Sneed. On May 23, 2003, the Honorable James R. Barber issued an Order of Dismissal denying relief and finding that the issues raised by Applicant were without merit.

Applicant then appealed the decision made by the PCR court and filed a timely notice of appeal. Applicant was represented by Andrew Johnson, Esquire. Counsel filed a Johnson petition for writ of certiorari on Applicant's behalf on January 27, 2004, raising the following issue:

Was Appellate counsel ineffective when counsel represented both appellant and his brother on appeal?

Mr. Johnson also filed a motion to be relieved as counsel. The Supreme Court of South Carolina issued an Order on February 16, 2005, denying the petition and granting counsel's request to withdraw.

CURRENT APPLICATION

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

1. Ineffective assistance of PCR counsel.

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 September 24, 1999. The remittitur from Applicant's direct appeal was issued on April 4, 2001, so he was therefore required to file his application on or before April 4, 2002. This application was filed on August 25, 2015, which was over thirteen (13) 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.

Ineffective Assistance of PCR Counsel

This Court further finds that this Application for Post-Conviction Relief should be summarily dismissed because it is a successive application for post-conviction relief and raises a claim that is not proper for post-conviction relief.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and is not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991).

The South Carolina Supreme Court in Aice v. State, held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. Id. at 451, 409 S.E.2d at 395. The Court in Aice further held that "the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394. The


Applicant's contention that prior PCR counsel was ineffective is not per se a sufficient reason warranting a successive PCR application under § 17-27-90.

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
Julie A. Coleman, Esquire
PCR Division - 5th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 20th day of May, 2016.


Alison Renee Lee
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

Kenneth James #261378
H.C.114
K.C.I. Hwy.
4848 Goldmine
Kershaw, S.C. 29067

SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
COLUMBIA, S.C. 29211

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