

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Walter J. McQuene,)
S.C.D.C. No. 299882,)

2013-CP-15-0214

Applicant,)

CONDITIONAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2014 DEC 17 AM 11:18

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Walter J. McQuene (Applicant) on March 19, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. He was indicted at the August 2003 term of the Colleton County Grand Jury for murder (2003-GS-15-0491). Everett W. Bennett Jr., Esquire, represented Applicant. On February 5, 2004, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Jackson V. Gregory sentenced Applicant to twenty-five years' imprisonment. Applicant did not appeal his plea or sentence.

2004-CP-15-1002

Applicant filed his first PCR application on October 15, 2004, alleging the following grounds for relief:

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1. Counsel for applicant was ineffective for failing to secure a competency evaluation prior to applicant entering a guilty plea.
2. The applicant's plea of guilty was not freely and voluntarily given due to a lack of competency at the time of the guilty plea.
3. After discovered evidence of lack of competency requires vacation of the conviction and sentence.

Michelle R. Suggs, Esquire, represented Applicant. Salley W. Elliott and Adrienne Turner, Esquires, represented Respondent. The Honorable Carmen T. Mullen dismissed Applicant's application with prejudice by consent order filed August 8, 2007. The order of dismissal indicates Applicant informed his counsel of his intent to withdraw his application with prejudice. Further, the order states Applicant acknowledged that he was satisfied with his counsel and was withdrawing his application freely and voluntarily. Ms. Suggs, Ms. Elliott, and Applicant also signed the consent order of dismissal.

II.

In his *second* and current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Mental evaluation.
3. Reconsideration modification of sentence.
4. The court was without subject matter/personal jurisdiction to impose sentence.

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Applicant submitted a pro se document entitled "Amendment and Additional Pleading to Prior Post-Conviction Relief Application filed March 19, 2012 Pursuant to Rule 15" on April 30, 2013. He further alleges he is being held in custody unlawfully for the following reasons:

1. Counsel was ineffective of assistance by not amending indictments which were not filed with the clerk of court to Applicant's post-conviction relief application as available grounds for relief.

2. Applicant has been prejudiced by remaining held confined unlawfully without proper subject-matter and personal jurisdiction to the Department of Corrections for twenty-five years imprisonment.

On June 4, 2013, Applicant submitted a pro se brief in support of his application and amended application. On June 18, 2013, Applicant submitted another pro se amendment and alleged the following grounds for relief:

1. My initial review proceeding counsel Michelle Suggs was ineffective assistance in failing to amend or raise the substantial ineffective assistance trial counsel claim, that trial counsel E.W. Bennett was ineffective assistance in failing to advise applicant of minimum sentence to voluntary manslaughter is not be impose less than 2 years.

Before this Court are the Colleton County Clerk of Court records regarding the subject convictions, records from the South Carolina Department of Corrections, and Applicant's previous PCR records.

III.

This Court finds this current 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

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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 Applicant could have raised these allegations in a previous application, then 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).

This Court finds Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous applications; therefore, this Court finds this application must be summarily dismissed because it is successive to Applicant's previous PCR application.

IV.

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This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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 held that the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offense he challenges in this application on February 5, 2004. Applicant did not appeal his conviction or sentence; therefore, Applicant was required to file his application on or before February 5, 2005. Applicant filed this application on March 19, 2013, **more than eight years** after the statutory filing period expired.

A motion for summary judgment is a proper mechanism 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, Section 17-27-70(c) of the South Carolina Code 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 must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

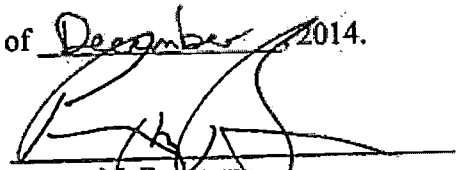
V.

Pursuant to Section 17-27-70(b) of the South Carolina Code, this 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 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 he may have with the Colleton County Clerk of Court and shall serve opposing counsel at the following address:

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Office of the Attorney General
Elizabeth Hedgecoe Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 15th day of December, 2014.



PERRY M. BUCKNER
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Walterboro, South Carolina

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