

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4005577

Raquib Abdul # 264465 Al-Min

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

| | |
|---------------------|--|
| Submitted by: _____ | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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. No. Dis.); 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 _____

REHEARD COUNTY
 FILED
 2014 SEP 20 PM 4:06
 JESSICA E. KINARD
 CLERK OF COURT

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 22 day of Sept, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Raquib Abdul # 264465 Al-Min

Jessica Elizabeth Kinard

Raquib Abdul # 264465 Al-Min

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jessica E. Kinard

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)
) 2014-CP-40-5577
 Raqib Abdul Al-Amin,)
 S.C.D.C. No. 264465)
)
) **CONDITIONAL ORDER OF DISMISSAL**
 v.)
)
 State of South Carolina)
)
)
 Defendant.)

RICHLAND COUNTY
 FILED
 2016 SEP 20 PM 4:43
 JEANETTE M. HOBBS
 C.C.P. & G.S.

This matter comes before the court by way of an application for post-conviction relief filed by Raqib Abdul Al-Amin (Applicant) on September 11, 2014 and amended by subsequent application filed September 18, 2015 and merged February 16, 2016 (“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 Richland County Clerk of Court. On or about August 25, 1997, the City of Columbia sought and obtained an arrest warrant against Applicant for the crime of Murder (F-599674). Applicant was thereafter indicted by the Richland County Grand Jury during the December 1997 term for the same (1997-GS-40-25414). Douglas Strickler, Esq. represented Applicant on the charges. Applicant proceeded to a jury trial before the Honorable James C. Williams Jr. from January 31 to February 4, 2000, which ended without a verdict. Applicant proceeded again to a jury trial on February 15 to February 18, 2000 and was found guilty as indicted. Judge Williams sentenced Applicant to a term of life imprisonment without the possibility of parole.

SCANNED

Applicant filed a timely notice of appeal and a direct appeal was perfected by Daniel T. Stacey, Esq. By opinion decided March 3, 2003, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). The Supreme Court of South Carolina denied Applicant's subsequent petition for a writ of certiorari. State v. Al-Amin, S.C. Sup. Ct. Order dated October 21, 2004. The Remittitur issued on October 26, 2004.

2004-CP-40-5551

Applicant filed his first Application for Post-Conviction Relief on November 30, 2004 (2004-CP-40-5551), alleging ineffective assistance of counsel, ineffective assistance of appellate counsel, and the violation of his due process rights. Respondent made its return on August 12, 2005. An evidentiary hearing into the matter was convened on June 6, 2007 before the Honorable J. Michelle Childs. Applicant was present at the hearing and was represented by Charlie J. Johnson Jr. Robert L. Brown, Esq., of the South Carolina Attorney General's Office, represented Respondent. Judge Childs denied and dismissed that application for PCR in an order dated November 19, 2007.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Elizabeth A. Franklin on June 26, 2008. Respondent filed its Return on October 10, 2008. On February 11, 2010, the Supreme Court denied Applicant's petition. Al-Amin v. State, S.C. Sup. Ct. Order dated February 11, 2010. The Remittitur was returned on April 22, 2010.

0:10-2023-CMC-PJG

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on or about July 30, 2010 (C.A. No. 0:10-2023-CMC-PJG). In his Petition, Applicant set forth the following grounds for relief:

1. Actual Innocence – Absence of Evidence
2. Ineffective Assistance of Counsel – Trial Counsel
3. Ineffective Assistance of Counsel – Appeal
4. Ineffective Assistance of Counsel – PCR Appeal
5. Ex Post Facto
6. Legal Errors of Trial Court
7. Legal Errors of PCR Court
8. Prosecutorial Misconduct

Respondent filed its Return and Motion for Summary Judgment on November 8, 2010. The Honorable Paige J. Gossett, United States Magistrate Judge, issued on July 12, 2011 a Report and Recommendation that Respondent's motion for summary judgment be granted. The Honorable Cameron McGowan Currie, United States District Judge, denied Applicant's Petition and accepted the Report and Recommendation supporting summary judgment. Al-Amin v. Stevenson, No. 0:10-2023-CMC-PJG, 2011 WL 3439411 (D.S.C. Aug. 5, 2011). Applicant appealed; the Fourth Circuit Court of Appeals dismissed Applicant's appeal on December 20, 2011 and the United State Supreme Court denied certiorari. Al-Amin v. Stevenson, 458 Fed. Appx. 290 (4th Cir. 2011), cert. denied, 132 S.Ct. 1931 (2012). The mandate issued on February 8, 2012.

2011-CP-40-3663

Applicant filed his second application for Post-Conviction Relief on June 7, 2011 (2011-CP-40-3663), alleging newly discovered evidence, ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and ineffective assistance of appellate counsel regarding his appeal from his first application. Respondent made its Return and Motion to Dismiss on September 27, 2011, arguing the application was barred by the statute of limitations, successive, and failed to state a claim. The matter was dismissed by the Honorable James R. Barber III by order dated November 6, 2012. Applicant filed no appeal.

2012-CP-40-7884

Applicant filed his third application for Post-Conviction Relief on November 28, 2012 (2012-CP-40-7884), alleging again his claims of ineffective assistance of counsel and newly discovered evidence. Applicant amended his application through a supplemental filing on January 24, 2013, advancing a new argument that the Court's then-days old holding in State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013)¹ should apply retroactively to his case. Respondent made its Return and Motion to Dismiss on March 3, 2013, arguing the application was barred by the statute of limitations and as successive. The matter was dismissed by the Honorable L. Casey Manning by order dated May 5, 2014.²

Applicant filed a timely notice of appeal on or about May 22, 2014. The South Carolina Supreme Court, noting that "petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper[.]" dismissed the matter. Al-Amin v. State, S.C. Sup. Ct. Order dated June 12, 2014. The remittitur issued June 30, 2014.

No. 14-332

Applicant filed on July 8, 2014 a motion under 28 U.S.C. § 2244 seeking an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2254. By Order filed July 22, 2014, the Fourth Circuit Court of Appeals denied that motion.

¹ "Our supreme court held in State v. Bryant, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006) that 'a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness.' . . . Unlike in Al-Amin, our supreme court has stated stealing is not always a crime of dishonesty if there are no additional affirmative false statements or acts of deceit beyond the crime itself." State v. Broadnax, 401 S.C. 238, 246, 736 S.E.2d 688, 692 (Ct. App. 2013).

² Though the Conditional Order of Dismissal did not address Applicant's Broadnax argument, Judge Manning did address it in his Final Order of Dismissal, stating simply that "Broadnax is not retroactive and therefore has no bearing on Applicant's case."

II. CURRENT APPLICATION

In his post-conviction relief application of September 11, 2014, Applicant alleges he is being held unlawfully for the following reasons:

1. "Intrinsic fraud upon the Court, pursuant to Rule 60(b), SCRCP."
 - a. "It was fraud upon the Court where Officer J.P. Smith interject his exercise of power in criminal case."
 - b. "That Respondent commit fraud upon the Court to get the benefit of an inference that Alamin was not allowed to challenge is fraud upon the Court."
 - c. "That Respondent commit fraud upon the Court when they lead the Court to evaluated the case through the lens of the Respondent's theory to determine whether the evidence should be admissible. Holmes v. South Carolina, 547 U.S. 319 (2006). [citation corrected]"
 - d. "That it was fraud upon the Court when the Respondent interference by obstruction, distraction and neglect, Miscarriage of Justice."

[sic] Applicant then requests relief as follows:

- "To issue its Order to set aside, grant a new trial or in the alternative, to order an evidentiary hearing as a gateway for issuance of the order; infra. Relief is available under the miscarriage of justice standard established in United States v. Mikalajunas, 186 F.3d 490, 492-493 (4th Cir. 1999). [citation corrected]"

[sic] In his supplemental filing of September 18, 2015, Applicant further alleges he is being held unlawfully for the following reasons (verbatim, [sic] not applied):

2. "Prior judgment upon which it is based is no longer equitable that the judgment should have retrospective application b/c such ruling rending Applicants trial / Applicant counsel ineffective and conviction a miscarriage of justice (violation of due process.)"
 - a. "Applicate PCR application is timely under S.C. Code Ann § 17-27-45(B) pursuant to final disposition with S.C. Supreme Court on Writ of Certiorari on July 8, 2015. State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). [citation corrected]"

[sic] Applicant then requests relief as follows:

- "Reversed and Vacated sentence and conviction. As an alternative granted a new trial."

[sic] Respondent incorporates the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR and federal habeas corpus actions, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds that 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 was convicted on February 18, 2000 and the remittitur from direct appeals issued on October 26, 2004. The current application was not filed until September 11, 2014 – well after the one-year statutory filing period expired. Therefore, the Application shall be summarily dismissed as barred by the statute of limitations.

Laches

The Court finds the Application must also be barred under the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). This requirement “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, Laches is an equitable doctrine defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief more than fourteen (14) years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Notwithstanding Applicant’s argument respecting Broadnax,³ Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and

³ Applicant also raised arguments relating to Broadnax in his previous PCR application that are all but identical to those presently before the Court, but which related to the Court of Appeals ruling, rather than the more recent (and presently at issue) Supreme Court ruling. The Court adopts the reasoning of the previous PCR court and finds Broadnax does not apply retroactively and therefore has no bearing on this case.

physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g., Bray* at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); *State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the Application shall be summarily dismissed as barred by the doctrine of laches.

Successive

Further, the Court finds 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 he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Thus, the Application shall be summarily dismissed 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 his allegations in his prior actions. The Courts, both state and federal, have repeatedly considered Applicant's allegations of ineffective assistance of counsel in his prior PCR and federal habeas corpus actions. In each action, the Courts have found his allegations to be meritless. The finality of the previous Court rulings should be respected.

Therefore, the Application shall be summarily dismissed as successive to Applicant's previous PCR application(s) and barred by the doctrine of *res judicata*.


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 he may have with the Richland 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 his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 16 day of Sept, 2016.



DEANDREA G. BENJAMIN
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina