

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED

2017 MAY -8 PM 3:46

Larry China, #175247,

2015-CP-43-1885

Petitioner,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

**ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS**

CERTIFIED TRUE COPY
OF ORIGINAL FILED

State of South Carolina,

RECEIVED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Respondent.

JUN 02 2017

SC Court of Appeals

This matter comes before the Court by way of a document filed August 14, 2015, and captioned "Petition for Writ of Habeas Corpus." The Respondent submitted a Return and Motion to Dismiss. The court convened a hearing on the motion to dismiss on November 9, 2016 in Richland County. The State was represented by Julie A. Coleman, and the Applicant represented himself.

The Applicant's convictions, detailed below, arise out of an incident that occurred on June 12, 1989. By letter to the court dated May 1, 2017, the Applicant submitted a document entitled "Official Weather and Atmospheric Report" that purports to detail the weather conditions, time of sunrise, time of sunset, etc. for June 12, 1989.

Though the undersigned is now an associate justice on the Supreme Court of South Carolina, he has continuing jurisdiction over this matter at the circuit court level by order of Chief Justice Donald W. Beatty.

PROCEDURAL HISTORY

The records before this court establish that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was indicted at the April 1990 term of the Sumter

[Handwritten signature]

County Grand Jury for Burglary – First Degree and Criminal Sexual Conduct (“CSC”) – First Degree (1990-GS-43-0763). He was represented by Marvin E. McMillan, Esquire, and Douglas Stricker, Esquire. Applicant proceeded to a jury trial before the Honorable Dan F. Laney, Jr. On January 31, 1991, the Applicant was sentenced to life imprisonment for Burglary – First Degree and to thirty (30) years imprisonment for CSC – First Degree.

A notice of appeal was filed and an appeal perfected. Applicant’s conviction and sentence were affirmed. State v. China, 312 S.C. 335, 440 S.E.2d 382 (Ct. App. 1993).

Thereafter, Applicant filed his first application for post-conviction relief (PCR) on April 11, 1994 (C.A. No. 1994-CP-43-0467). The State made its Return on September 12, 1994. An evidentiary hearing was convened on August 28-29, 1995, before the Honorable Thomas W. Cooper, Jr. Applicant pursued the following claims for relief:

1. Ineffective assistance of counsel.
 - a. Failure to investigate, failure to make motions during trial, and withdrew request for jury charges.
 - b. Failure to object to closing arguments by solicitor.
 - c. Failure to put victim’s mental capacity in issue.
 - d. Failed to request charge on lesser-included offense of assault.
2. Insufficient indictment.
3. Ineffective assistance of appellate counsel.

Judge Cooper denied and dismissed the application with prejudice in a written order dated January 31, 1997. Applicant’s Motion to Alter or Amend was denied on March 15, 1997. Applicant made a Petition for Writ of Certiorari to the South Carolina Supreme Court. The petition was denied on June 19, 1998, and the remittitur was sent on July 7, 1998.

Applicant filed a PCR application on September 29, 1998 (C.A. No. 1998-CP-43-0946).

Applicant alleged:

1. Denial of due process and equal protection.
2. Ineffective assistance of counsel.
3. Ineffective assistance of prior PCR counsel.

4. Ineffective assistance of prior PCR appellate counsel.

An evidentiary hearing was convened on July 15, 1999, before the Honorable Thomas W. Cooper, Jr. By written order dated April 22, 2000, Judge Cooper dismissed the application with prejudice as successive and barred by the one-year statute of limitations. A Johnson petition for writ of certiorari was filed. The South Carolina Supreme Court dismissed the petition on May 15, 2002, and the remittitur was sent on May 31, 2002.

On May 14, 2002, Applicant filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina (C.A. No. 6:02-1927-20AK). Applicant set forth several grounds for relief

1. Trial court error:
 - a. Allowed the State to impeach him for prior bad acts.
 - b. Refused to allow in camera meeting to determine competency of State's witnesses.
 - c. Admitting genetic testing testimony.
 - d. Violated the confrontation clause by not allowing defendant to recross-examine a witness.
2. Ineffective assistance of counsel:
 - a. Failure to object to:
 - i. Chain of custody of blood samples.
 - ii. Judge's charge on first degree burglary.
 - iii. Burden-shifting argument by the State.

Respondents made their move for summary judgment on July 26, 2002. In a written order dated February 27, 2003, the Honorable Henry M. Herlong, Jr., granted the Respondents' motion for summary judgment and dismissed the petition.

Applicant filed a "Writ of Mandamus September 11, 2003 (C.A. No. 2003-CP-43-0645). Respondent made its Return and Motion to Dismiss on May 11, 2004. An evidentiary hearing was convened on June 7, 2004, before the Honorable Howard P. King. Judge King denied and dismissed the action in a written order dated August 9, 2004. Applicant filed an appeal, but the matter was dismissed on July 12, 2005, and the remittitur was sent on July 28, 2005.

On May 3, 2007, Applicant filed a "Petition for Writ of Habeas Corpus" (C.A. No. 2007-CP-43-0931). Applicant alleged:

1. "Prosecutorial misconduct."
2. "Hearsay Rule Violation / 6th and 14th Amend."
3. "Procedural Due Process violation."
4. "Confrontation clause violation."

Respondent made its Return and Motion to Dismiss on November 26, 2007. A Conditional Order of Dismissal was issued on November 29, 2007, and filed December 11, 2007, by the Honorable Clifton Newman. A Final Order of Dismissal was signed by the Honorable George C. James, Jr., on January 27, 2008, and filed January 28, 2008. On February 5, 2008, Judge James entered a new order of dismissal acknowledging letters from Applicant dated January 23, 2008, and January 25, 2008. On July 17, 2008, Judge James denied Applicant's pro se motion. No appeal was taken.

Applicant filed a document captioned "Petition for Writ of State Habeas Corpus" filed on July 15, 2009 (C.A. No. 2009-CP-43-1579). Applicant alleged:

1. "Violation of Due Process clause of the 5th and 14th Amendments to the United States Constitution."
2. "Violation of the Sixth Amendment based on conduct never proved to a jury beyond a reasonable doubt."
3. "The provisions of the Sentencing Reform Act of 1984 (SRA) 18 of the United States Code; Rule 32 (c)(1) federal Rule of Criminal Procedure; and Rule 52(a), SCRCP were unconstitutionally applied in this case."
4. "Petitioner as-applied, challenges the Guidelines enhancements that, based on fact-finding by a Judge alone, raised his sentence above the range legally mandated for sentence enhancement purposes, determined by reference to the Jury verdict."
5. "The sentence received exceeds the maximum authorized by law."

Respondent made its Return and Motion to Dismiss on November 16, 2009. An Order of Dismissal was issued on November 30, 2009, and filed December 3, 2009, by the Honorable R. Ferrell Cothran, Jr. No appeal was taken.

On May 18, 2015, Applicant filed a second or successive Federal Habeas Corpus Petition. By Order filed June 15, 2015, the United States Court of Appeals for the Fourth Circuit denied Applicant's motion for the district court to consider a second or successive application.

In his current Petition for State Habeas Corpus, Applicant alleges the following grounds for relief:

1. "Did the State mislead the grand jury by submitting insufficient evidence to obtain an indictment for burglary 1st degree?"
2. "Whether the Petitioner's convictions rest on and were obtained by insufficient evidence?"
3. "Whether the Petitioner's convictions and sentence can be sustained because of the use of insufficient evidence in light of *State v. Bostic*?"

FINDINGS OF FACT AND CONCLUSION OF LAW

"A habeas corpus petition must support the requested relief." *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. *Id.* at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); *Gibson*, 329 S.C. at 42, 495 S.E.2d at 428. "Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review." *Gibson*, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. *Id.* PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as



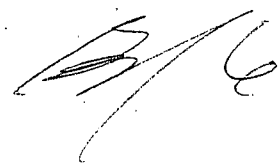
procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.


Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id.

This Court finds that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Additionally, Petitioner cannot file a petition in the circuit court, but must instead file in the original jurisdiction of the Supreme Court. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to be the initials 'B/C' or similar, located at the bottom right of the page.

AND IT IS SO ORDERED this 8 day of May, 2017.



GEORGE C. JAMES, JR
Presiding Judge

Sumter, South Carolina

