

Parentness R. Addison
Lee Correctional Institution
F-6-B-2253
990 Wisacky Hwy
Bishopville, S.C. 29010

RECEIVED

JUN 13 2017

S.C. SUPREME COURT

The Supreme Court of South Carolina
Office of the Clerk
P.O. Box 11330
Columbia, South Carolina 29211

RE: Parentness R. Addison vs. State of South Carolina
Case No: 2015-CP-10-3350

Dear Clerk:

Enclosed for filing is a notice of appeal in the
above case.

Sincerely,

Parentness R. Addison

Parentness R. Addison 161445
Lee Correctional Institution
F-6-B-2253
990 Wisacky Hwy
Bishopville, S.C. 29010

Cc: Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, S.C. 29211

Date: June 8th 2017

State of South Carolina

In the Supreme Court

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2015-CP-10-3350

Parentness R. Addison

Appellant

-Vs-

State of South Carolina,

Respondent

RECEIVED

JUN 13 2017

S.C. SUPREME COURT

Notice of Appeal

I, Parentness R. Addison, appeal the order of the Honorable Deadra L. Jefferson dated May 8, 2017 and filed on May 9, 2017. Appellant received written notice of entry of this order on the 18th day May, 2017.

Date: June 8th 2017

Parentness R. Addison

Parentness R. Addison 161445
Lee Correctional Institution
990 Wisacky Hwy
Bishopville, S.C. 29010

Appellant, Pro Se.

Other Counsel of Record:

Office of the Attorney General
State of South Carolina
P. O. Box 11549
Columbia, S.C. 29211

State of South Carolina
In the Supreme Court

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2015-CP-10-3350

Parentness R. Addison
Appellant

- Vs -

State of South Carolina
Respondent

RECEIVED

JUN 13 2017

S.C. SUPREME COURT

Certificate of Service

I, Parentness R. Addison, hereby declare under the penalty of perjury, that on this date, I have served a copy of Appellant's Notice of Appeal, upon the respondent, by placing a copy of same, in prison officials mailroom hands, for depositing in the United States mail, addressed to the attorney of record, office of the Attorney General, State of South Carolina, P.O. Box 11549, Columbia, S.C. 29211

Date: June 8th 2017

Parentness R. Addison
Parentness R. Addison 161445
Lee Correctional Institution
F-6-B-2253
990 Wisacky Hwy
Bishopville, SC 29010
Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Parentness Ricardo Addison, #161445,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-10-3350

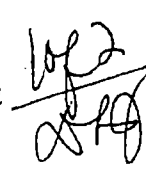
FINAL ORDER OF DISMISSAL

FILED
2017 MAY -9 PM 4:37
JULIE A. HARRINGTON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 12, 2015. Respondent made its return on May 4, 2016, requesting the application be summarily dismissed as successive, untimely, and without merit.

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 11, 2016, and filed May 20, 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 17, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Objections to Conditional Order of Dismissal" and filed on June 2, 2016, Applicant again argues he is entitled to a hearing on the basis of after- or newly-discovered evidence "supplied by the U.S. Department of Justice." Applicant also argues that because his previous applications were filed before 2015, he could not have raised his current allegations in his previous applications.




Applicant subsequently filed a document captioned "Applicant's Amended Objections to Court's Conditional Order," dated July 7, 2016. With this document, Applicant attached the letter addressed to Ninth Circuit Solicitor Scarlett Wilson from the Department of Justice. Applicant argues he is entitled to Counsel and a hearing.¹

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its 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 notes the Applicant was convicted and sentenced on August 31, 1989, and the South Carolina Supreme Court affirmed his convictions and sentences on June 10, 1991. Because this action was filed on June 12, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is Applicant's *fourth* application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980).

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.

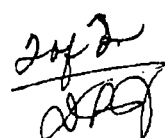
AND IT IS SO ORDERED this 8th day of May, 2017.



THE HONORABLE DEADRA L. JEFFERSON
Chief Administrative Judge
Ninth Judicial Circuit

Ches, South Carolina.

¹ This Court notes that the proper mechanism for challenging DNA evidence is through the Post-Conviction DNA Testing Act. S.C. Code Ann. § 17-28-10 to -360, which must be filed under the original indictment number or petition with the clerk of court of the general sessions court.



Ce
AG
AT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Parenthess Ricardo Addison
S.C.D.C. No. 161445

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS FOR
)
) THE NINTH JUDICIAL CIRCUIT
)

2015-CP-10-3350

CONDITIONAL
ORDER OF DISMISSAL

FILED
2016 MAY 20 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court from an application for post-conviction relief filed June 12, 2015. The Respondent made its Return, requesting the matter be summarily dismissed for failure to file within the time limits mandated by the applicable statute of limitations; because it is successive; and because it fails to make a prima facie showing that Applicant is entitled to relief based on newly discovered evidence. This order follows.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted during the February 1989 term of the Charleston County Grand Jury for assault and battery with intent to kill (1989-GS-10-0290), criminal sexual conduct in the first degree (1989-GS-10-0291), and kidnapping (1989-GS-10-0292). Applicant was also indicted during the August 1989 term of the Charleston County Grand Jury for grand larceny of a vehicle (1989-GS-10-2704). Applicant proceeded to trial, and a jury found him as indicted. Jimmy Stuckey, Esquire, represented Applicant. On August 31, 1989, the Honorable Daniel Foster Laney, Jr. sentenced

Applicant to life imprisonment. Applicant appealed, and the South Carolina Supreme Court affirmed his convictions. *State v. Addison*, Op. No. 91-MO-136 (S.C. S. Ct. filed June 10, 1991).

First PCR Application: 1996-CP-10-1952

Applicant filed his first PCR application on June 4, 1996, alleging the following grounds for relief:

1. Ineffective assistance of counsel:
 - i. Failure to preserve Batson objection;
 - ii. Failure to request that the trial judge remove a juror because she had been to the club where the assault began on many previous occasions;
 - iii. Failure to object to the photo line-up used a trial as unduly suggestive;
 - iv. Failure to introduce additional paychecks to indicate a steady income source for spending money; and
 - v. Failure to pursue DNA testing of a hair found in the victim's car.
2. Court error by failing to permit a toxicology expert to answer a hypothetical question whether the prosecuting witness could reliably identify her assailant.

Respondent filed its Return on April 21, 1998. An evidentiary hearing was held on November 10, 1999. Harry Devoe, Esquire, represented Applicant. On December 16, 1999, the Honorable Daniel F. Pieper denied and dismissed the application with prejudice.

Applicant appealed, and the South Carolina Supreme Court denied the petition for a writ of certiorari on September 12, 2001.

First Federal Habeas Corpus Petition: 2:99-3337

Applicant filed a pro se federal petition for a writ of habeas corpus on October 12, 1999. Respondent filed its Return and Motion for Summary Judgment on November 22, 1999. The Honorable Robert S. Carr, United States Magistrate Judge, issued a report on January 28, 2000, recommending Respondent's motion for summary judgment be granted. The Honorable



Margaret B. Seymour, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition without prejudice on March 2, 2000.

Second Federal Habeas Corpus Petition: 2:02-0085

Applicant filed a second pro se federal petition for a writ of habeas corpus on January 15, 2002. Applicant also filed a motion for DNA testing. Respondent filed its return and motion for summary judgment on April 11, 2002. Judge Carr issued a report on July 18, 2002, recommending Respondent's motion for summary judgment be granted. Judge Seymour dismissed the petition and denied Applicant's motion for DNA testing on September 25, 2002.

Second PCR Application: 2007-CP-10-2843

Applicant filed his second PCR application on July 3, 2007, alleging the following grounds for relief:

1. Actual innocence.

Respondent filed its Return and Motion to Dismiss on February 2, 2009. The circuit court issued a conditional order of dismissal on February 2, 2009, finding the application was untimely and successive. By order filed July 10, 2009, the Honorable Deadra L. Jefferson denied and dismissed the application with prejudice.

Third PCR Application: 2013-CP-10-7299

Applicant filed his third application on December 17, 2013, alleging the following grounds for relief verbatim:

1. Subject matter jurisdiction.

- a. The sole signature of a grand jury foreperson does not support and cannot in itself convert an "accusation" into a valid indictment, without support, documentation that 12 grand jurors reviewed and voted upon the accusation, into a properly found indictment, as

demanding by our Constitution(s) and the laws of this State. A conviction under such prohibitions shall not stand.

Respondent filed its return and motion to dismiss on January 7, 2014, requesting that the application be summarily dismissed. The Honorable R. Markley Dennis, Jr., issued a Conditional Order of Dismissal on January 8, 2014, provisionally denying and dismissing the matter. Applicant made no response, and in a Final Order filed April 3, 2015, Judge Dennis denied and dismissed the application with prejudice. Applicant did not appeal.

Current PCR Application

Applicant filed his *fourth* and current application on June 12, 2015, alleging the following grounds for relief verbatim:

1. "The testimony /report used to convict me has been determined by the U.S. Dept. of Justice to be invalid."

Before this Court are the Charleston County Clerk of Court records regarding the subject conviction, appellate records, records from Applicant's prior PCR actions, and Respondent's Return and Motion to Dismiss

FINDINGS OF FACT AND CONCLUSION OF LAW

Newly Discovered Evidence

This Court interprets Applicant's allegation that the testimony used to convict him has been determined to have been invalid amounts to a claim of newly discovered evidence. This claim fails to make a prima facie showing that the new evidence likely would have changed the outcome at trial. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- 1) Is such as would probably change the result if a new trial was had; 2) has been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before the trial; 4)

is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant's allegation of newly discovered evidence is based upon a report issued by the United States Department of Justice. That report consists of a finding by the Federal Bureau of Investigation (FBI) that "the examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association – this type of testimony exceeded the limits of the science." The Department of Justice has taken no position regarding the materiality of the error in this case.

This Court finds that Applicant has failed to show this evidence is such as would probably change the result if a new trial was had. Specifically, while the identification of the attacker was the central issue, it turned on the reliability of the victim's eye witness account of her assault¹ – *not* whether a hair found in the back seat of the victim's car belonged to Applicant. The distinction here is important: the ownership of the hair in question was not relevant to the identity of the person who attacked the victim. The presence of Applicant's hair in the victim's vehicle was consistent with Applicant's version of events at trial. The hair put into evidence at trial came from the driver's side rear of the vehicle. App. p. 305-05. According to Applicant's story, he came into contact with the victim earlier in the night as she was hanging her head out her car window and trying to gag or throw up. App. p. 528. Applicant testified that he asked the victim if she was okay, and then picked up some of her personal items off of the ground and put

¹ In fact, the reliability of the victim's account and subsequent identification of the Applicant was heavily contested at trial. At trial, it was subject to an *in camera* hearing, where the trial judge ultimately ruled that it was admissible. App. p. 182-227.

them in the floor behind the driver's seat. App. p. 528-29. Trial counsel asserted, during opening statements, that if the hair in question actually belonged to Applicant then it got there as he was putting those items back. TT, p. 24.

Moreover, as the FBI report acknowledges, there was testimony to the effect that there were significant limitations to using hair comparisons to make identifications. On cross-examination, trial counsel brought to light a specific part of the expert's report that said "hair comparisons do not constitute a basis for absolute personal identification." App. p. 309. Trial counsel also elicited testimony from the expert witness to the effect that hair comparisons cannot lead to an absolute, "beyond a reasonable doubt" identification. App. p. 310. The jury heard that hair comparisons are "not like fingerprints," and that "DNA is much stronger." Id.

Before the Court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a prima facie showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Successiveness

This Court finds that any additional allegations raised in the current application for post-conviction relief must be summarily dismissed as successive to his prior application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). The relevant statute provides

[a]ll 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.

S.C. Code Ann. § 17-27-90 (2014). Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to 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 an allegation could have been raised in a previous application, then the applicant may not raise it in successive applications. Id. Courts "will not engage in an exploration of why the grounds were not raised." Id. ("[I]t is sufficient that they could have been raised, but were not."). The applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds that the current allegations were or 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 Section 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, and has therefore failed to meet his burden. Further, Applicant chose to *voluntarily* withdraw all allegations in his prior PCR application, with the understanding that it would result in its dismissal with prejudice. As a result, this Court finds summary dismissal is appropriate.

A large, stylized handwritten signature or set of initials, possibly 'B' or 'R', written in black ink.

Statute of Limitations

This Court further finds that this Application for Post-Conviction Relief should 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. Section 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). Following Applicant's conviction and appeal of the offenses he is currently challenging, the Remittitur was issued on September 25, 2008. Therefore, Applicant was required to file this application on or before September 26, 2009. This Application was filed on May 14, 2015, which was over *five years* after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

Failure to State a Claim



This Court also finds that this Application for Post-Conviction Relief must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered *non-collateral* attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. In Cooper the petitioner made a similar claim as Applicant here, that he was not given correct credit for the time served before his conviction. The South



Carolina Supreme Court in Cooper stated that PCR was improper for the petitioner because by challenging the duration of the sentence, the petitioner was trying to enforce his sentence under law and therefore *not* challenging the validity of the underlying conviction or sentence. Id. A claim for time served is a *non*-collateral attack of a conviction and must be pursued through the Administrative Procedures Act (APA). Id.

This Court finds that Applicant's allegations all concern matters which must first be raised through SCDC's disciplinary or grievance procedure. If Applicant is dissatisfied with the decision rendered by SCDC, then he may seek review of the decision under the APA. Therefore, this application must be dismissed.

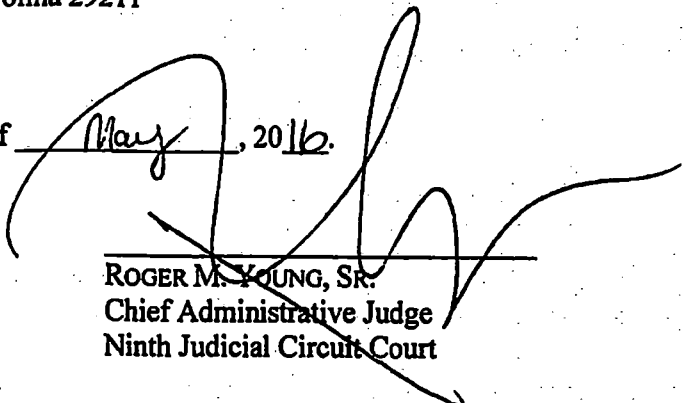
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CONCLUSION

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


Office of the Attorney General
J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 11th day of May, 2016.



ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit Court

Charleston, South Carolina

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P.S. & FC.
By 
DEPUTY CLERK

Parentness R. Addison
161445 F-6-2253
990 Wisacky Hwy
Bishopville, SC
29010

Legal

Supreme Court of South Carolina
Office of the Clerk
P.O. Box 11330
Columbia, SC 29211

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS

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