

July 13 2017

The Honorable Daniel E. Shezrouse
Clerk, Supreme Court of South Carolina
Post office Box 11330
Columbia, South Carolina 29211

RECEIVED

JUL 17 2017

S.C. SUPREME COURT

RE: NOTICE OF APPEAL,
Clayton Benjamin Jr vs. STATE OF SOUTH CAROLINA
From CLARENDON COUNTY Case No: 2014-CP-14-00194

Dear Mr. Shezrouse;

Please find enclosed for filing is a notice of appeal
in the above case. Also enclosed are the following:

- (1). Proof of service of the notice of appeal on the respondent.
- (2). A copy of the order of Dismissal signed by
R. Ferrell Cothren Jr. Administrative Judge which is
to be challenged on appeal.
- (3). This appeal is filed pursuant to Rule 203(d) SCACR.

With Warm Regards
Clayton Benjamin Jr

Clayton Benjamin Jr. #252521
Georgetown Detention Center
2394 Browns Ferry Rd.
Georgetown SC. 29440
Prose Litigant

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

R. FERRELL COTHRAN JR. Administrative Law Judge

Case No. 2014-CP-14-00194

STATE OF SOUTH CAROLINA

CLAYTON BENJAMIN JR.
252521

V.

Respondant,

Appellant

NOTICE OF APPEAL

Clayton Benjamin Jr. appeals the order of DISMISSAL signed by the Honorable R. Ferrell Cothran Jr dated November 28, 2016. Appellant received written notice of entry of this order judgement on June 27, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran Jr. Administrative Judge

Case NO. 2014-CP-14-00194

STATE OF SOUTH CAROLINA

Respondent

CLAYTON BENJAMIN JR.

v.

Appellant

PROOF OF SERVICE

I Clayton Benjamin Jr certify that I have served the Notice of Appeal by depositing a copy of it in the UNITED STATES Mail, postage prepaid, Addressed to:

Megan Harrigan Jameson
ATTORNEY GENERAL OFFICE
Post OFFICE BOX 11549
COLUMBIA SC. 29211

BELLAH G. Roberts
CLARENDON COUNTY CLERK
POST OFFICE BOX 136
Manning SC. 29102

Clayton Benjamin Jr
Clayton Benjamin Jr #
252521

SWORN to before me this 13th day
of July 2017

Notary Public for South Carolina

My Commission Expires: 7-12-2022

Jeanne Clancy



ALAN WILSON
ATTORNEY GENERAL

June 27, 2017

Clayton Benjamin, #252521
Georgetown County Detention Center
2394 Browns Ferry Rd
Georgetown, SC 29440

Re: Clayton Benjamin v. State of South Carolina
2014-CP-14-0192

Dear Mr. Benjamin:

Enclosed is a copy of the **Final Order of Dismissal** signed by the Honorable R. Ferrell Cothran, Jr. and filed with the Clarendon County Clerk of Court.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/bea
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Clayton Benjamin, #252521,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2014-CP-14-00194

FINAL ORDER OF DISMISSAL

12/15/16

2016 DEC 15 PM 3:01

This matter comes before this Court by way of an application for post-conviction relief filed May 15, 2014. Respondent made its *Return and Motion to Dismiss* on or about August 13, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and/or any available relevant records attached thereto, this Court issued a Conditional Order of Dismissal (COD) provisionally denying and dismissing this action, while giving the Applicant twenty (30) days from the date of service of said Order in which to show why the dismissal should not become final. The Conditional Order of Dismissal was served on this Applicant on or about August 13, 2014.

In a document captioned "Summary Judgment and Opposition to Return and Motion to Dismiss" and dated August 29, 2014, the Applicant argues that:

Applicant received recent evidence that the attorneys hired by him committed mail fraud and posing as legal lawyers were convicted and charged in the United States District Court of Michigan . . . Applicant's original post conviction relief and 59(e) motion was premature and inadequately done due to the misleading advice of perpetrating attorneys. The hopes of a fair opportunity to obtain justice were removed due to this negligence and applicant was denied due process of the law. Furthermore, if attorney land would have visited applicant upon request, the fraudulent attorney's scheme would have come to a halt. The applicant could have requested an extension and presented a suitable post conviction relief application.

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STATE GRAND JURY.
PROS SECTION

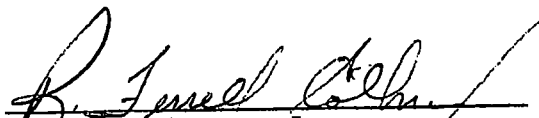
Applicant also argues his application is not untimely and because: "If a violation of rights takes place over a period of time, it may be considered to be a 'Continuing Wrong' or continuing harm, violation." Applicant argues the application is not successive because he stated "sufficient reasoning" to excuse the successive bar.

This Court has reviewed the Applicant's response to the COD in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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. The Applicant's attention is directed to Rule 243 (including subsection (c)), SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 28 day of Nov, 2016.


R. FERRELL COTHRAN, JR.
Chief Judge for Administrative Purposes
Third Judicial Circuit

Manning, South Carolina.

records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

According to the South Carolina Department of Corrections, the Applicant is serving the following sentence:

INMATE SENTENCE AND LOCATION

SCDC ID:	00252521
SID:	SC00831218
OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
ADMISSION DATE:	08/10/1988
LOCATION:	GEORGTN CNTY DF
SECURITY / CUSTODY:	1B / MINIMUM OUT
EWC LEVEL:	2F5
EEC LEVEL:	
PROJECTED RELEASE DATE:	08/29/2019
PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

<http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000252521>

Prior PCR history

The Applicant also filed two prior PCR applications, 2001-CP-14-411 and 2005-CP-14-537.

In making its decision, the Court had before it the available records of the Clarendon County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

PCR application allegation(s):

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Newly Discovered Evidence, Violation of Due Process
 - (b) Ineffective Assistance of Counsel
 - (c) Civil Rights Violation, Equal Protection Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) After Discovered Evidence
 - (b) Attorney Arrested and Convicted For
 - (c) Fraud (see Attachment)
19. State clearly the relief you seek in filing this application:
- vacating, setting aside, or Collecting
the conviction and sentence

Newly Discovered Evidence

Petitioner hired Lari Zeka and John Henry Wilson of the University Research and University Legal Services as attorneys for his original Post Conviction Relief. Petitioner was led to believe that they were assisting his state appointed attorney John C. Land in preparing and submitting an Amendment to his PCR application. The legal team also was responsible in assisting Petitioner's state appointed attorney in the filing of the 591a Motion to Alter and Amend.

Petitioner recently received information that the legal team hired was all part of a scheme and were charged in United States District Court Eastern District of Michigan with violations of Title 18 U.S.C § 1341: Mail Fraud (2:10-cr-20581). Petitioner was forwarded his original legal documents that were recovered due to the federal criminal investigation against Wilson and Zeka.

Petitioner's Original PCR application and 591a Motion was premature and inadequately done due to this interference. Petitioner did not get a fair opportunity

in obtaining justice due to the negligence and request a hearing be had on his behalf. Petitioner was denied Due Process and his PCR attorney was ineffective for not assuring that proper documents were filed on his behalf.

Equal Protection Violation

On November 1, 2010, the Fair Sentencing Act became effective. The Fair Sentencing Act replaced the 100-to-1 Crack to powder Cocaine sentencing ratio with an 18-to-1 ratio (28 grams will trigger a 5-year mandatory minimum and 280 grams will trigger a ten year mandatory minimum) under 21 U.S.C. § 841. In *United States vs Blewett* 2013 U.S. App Lexis 9889 (6th Cir). The Sixth Circuit reversed prior decisions and ruled that the Fair Sentencing Act "should apply to all defendants, including those sentenced prior to its passage.

South Carolina developed its Omnibus bill in reference to the Fair Sentencing Act to reduce sentencing. As of June 2010 those sentenced are given the opportunity to receive earn work credit, good time behavior credit, parole eligibility and more. Those sentenced before the enactment of the Omnibus bill with similar or the same crimes are not

afforded the same privilege as those sentenced after the passing of the Omnibus Bill.

Petitioner argues that the 14th Amendment forbids a state to "deny any person within its jurisdiction the equal protection of the laws" all persons similarly situated should be treated alike.

Civil Rights Violation

The Fair Sentencing Act has resulted in a number of prisoners receiving time reductions from their sentences. Part of its passing was due to the harsh sentences given to black Americans in reference to crack versus powder cocaine disparities. South Carolina's Omnibus Bill has given relief to inmates sentenced since its passing. Not only is the petitioner a part of that segregated group of inmates but also argues that as a black American, he has suffered the cruelty of racial discrimination. He has been victimized by racial remarks and threats handed down by law enforcement and officials. He has been given a lengthy sentence of 25 years for conspiracy to traffick crack cocaine. The only direct evidence introduced was a small amount of marijuana and the testimony of a career criminal who was given immunity to testify. Petitioner was told by arresting officer that "he was going to make an example

Out of his black ass." From that moment things were extremely unfair and prejudicial.

Acting on a tip from anonymous caller, law enforcement arrested three men in a pick-up truck on interstate I-95 with over 100 grams of Crack Cocaine. One of the passengers of the vehicle made his admittance to officers of his recent arrest for drug trafficking and indicated that he received the drugs from a home some sixty miles away in another County. He confirmed that there were more drugs, and he would take the law enforcement to the drugs in hopes of helping himself at trial. A search was conducted at the alleged home, which belonged to petitioner. Other than a small amount of marijuana, none of the suspected drugs were found in the alleged resident. People were seen fleeing the nearby home that belonged to petitioners grandmother but no one was captured. The home of the grandmother was searched. In a room she rented to a Mr. Tony McFadden, drugs were found. The tenant was never apprehended. Petitioner only received a charge of possession of Marijuana the day of the search which was August 28 1996. A month later petitioner was approached by Sled agent Roger Jowers. Officer Jowers enquired about the incident that occurred on August 28 1996. He wanted to know who were the tenants that

fled from petitioner grandmothers home on the day of the search. Petitioner refuse to answer outside of the presence of his attorney. He was then arrested again for the same August 28 1996 incident but now charge with Trafficking Crack Cocaine as if in the vehicle with the initial three stopped for drug trafficking.

At the preliminary hearing the case against petitioner was dismiss due to lack of evidence. Judge Howard P. King inform the prosecutor (Jon E Ozmint) that if he believes this case is a conspiracy he would have to go before the Grand Jury with more evidence. Prosecutor Ozmint offerred immunity to George Wilson, one of the passengers arrested for trafficking in exchange for his testimony. Wilson testified before the grand Jury on an earlier drug trafficking charge never mentioning petitioner.

As a result of Wilsons testimony for the August 28 1996 incident, a superseding indictment was handed down naming petitioner, Darrell Brown, Charles Tomlin but omitting George Wilson. The Charge was now Conspiracy to traffick

Crack Cocaine in Clarendon, Orangeburg and Sumter counties. From August 1995 until on or about August 28 1996. A one day marijuana charge has now been enhanced into a year long Conspiracy to traffick.

Trial resulted into a hung jury. The State now offered Darrel Brown a 3 year deal for his testimony. Ultimately the petitioner was convicted to 25 years. None of the traffickers were found guilty.

Petitioner believes that this kind of miscarriage of Justice has not only effect our Country with the passing of the Fair Sentencing Act. A door has been opened South Carolina Omnibus Bill has begun its involvement in correcting harsh sentencing. But this involvement has only effected those sentenced after June 2010. Petitioners equal protection rights have been violated because of this sort of unfairness. Due Process of law have been stripped. And Petitioner stands on our Country Supremacy Clause. the 6, 8, and 14th Amendments of the Constitution as valid grounds for this Complaint.

As a result of this complaint the petitioner ask for relief of sentence, time served, new trial, earned work credit, good time credit, educational credit, parole eligibility and all else afforded by South Carolinas Omnibus bill.

Findings of Fact and Conclusions of Law

Timeliness – S.C. Code §17-27-45(a)

This Court agrees with the Respondent 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.

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). For the purposes of this Order, the Applicant's conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. September 8, 1998 or August 23, 2001. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCP means that this PCR application had to be filed by August 24, 2002. This Application was filed on May 15, 2014, which was beyond the time that the statutory filing period had expired, i.e. -4282 days (08/24/2002 was a weekend).

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) (1985) 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 shall summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

SUCCESSIVE

The application should be summarily dismissed because it is successive to the previous 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). S.C. Code Ann. § 17-27-90 (1985) 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 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." [Emphasis in original]. Id., 305 S.C. 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. 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).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications.

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) (1985) 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 finds that the application for post-conviction relief is summarily dismissed for the reasons explained above.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted thirty (30) 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 Clarendon County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General Brian T. Petrano
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 18 day of Aug, 2014.


The Honorable W. Jeffrey Young
Administrative Judge
Fifth Judicial Circuit

Dumter, South Carolina

Clayton Benjamin Jr. 252521

Georgetown Detention Center

2394 Browns Ferry Rd #30

Georgetown S.C. 29440

CHARLESTON SC 29

14 JUL 2017 PM 11:11



Mr. Daniel E. Shearouse
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