

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County
Hon. Deadra L. Jefferson, Presiding
C/A No. 2015-CP-10-0213

RECEIVED

JUL 21 2017

Christian Gilliard -- Appellant,

S.C. SUPREME COURT

-vs-

State of South Carolina -- Respondent,

WRITTEN EXPLANATION

PURSUANT TO RULE 243, SCACR.

Other Counsel of Record:

Assistant Attorney General
Alicia A. Olive
P.O. Box 11549
Columbia, SC. 29211

Christian Gilliard
SCDC# 305883
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Appellant, pro-se

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 21 2017

S.C. SUPREME COURT

Christian Gilliard)
Appellant,) WRITTEN EXPLANATION PURSUANT
-vs-) TO RULE 243, SCACR
State of South Carolina)
Respondent,)

)

Introduction

This matter comes before this Court by way of an application for post conviction relief that was filed January 9, 2015, and was denied as successive.

Procedural History

Appellant is presently confined in the South Carolina Department of Corrections serving 30-years for murder and 20-years for attempted armed robbery stemming from the same set of facts. The sentences were ordered concurrent. No direct appeal was filed.

Appellant filed his first PCR application on May 16, 2005 alleging ineffective assistance of counsel. Appellant was represented by State appointed PCR counsel, William Runyon. An evidentiary hearing was convened March 12, 2007. The Honorable Roger M. Young by way of written order denied relief and dismissed the application March 23, 2007. A timely notice of

appeal was filed. Appellant was represented by State appointed PCR appellate counsel Katherine Hudgins of the South Carolina Indigent Defense. Hudgins filed a no merit Johnson petition which was denied June 29, 2009.

Appellant filed his second PCR application on January 9, 2015, alleging (1). Ineffective assistance of counsel, (a) counsel advised appellant that if he went to trial he would be found guilty under the "felony murder rule", to which there is no such rule in law. *Lowry v. State*, 376 S.C. 499, 657 S.E.2d 760 (2008); (2) miscarriage of justice; and (3) Actual Innocence of the crime and sentence.

The State filed their Return and Motion to Dismiss on October 2, 2015. Respondent submitted a Conditional Order which the Court ultimately signed on October 9, 2015. Appellant filed his time Opposition and Reply to the Conditional Order. Thereafter the Respondent submitted a Final Order in their favor which the Court also signed dismissing the application as successive. Appellant filed a timely notice of appeal. This appeal follows in accordance with Rule 243, SCACR:

ISSUE (I)

DID THE LOWER COURT ERR IN DISMISSING THE INSTANT APPLICATION AS SUCCESSIVE?

Appellant contends the lower court erred in denying and dismissing the instant application as successive without conducting a hearing into the matter. As this Court knows all PCR applicants are entitled to "one full bite of the apple". *Id.* S.C. Code Ann. §17-27-90 provides that: "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, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the Court finds a ground for relief which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Appellant was represented by State statutory (Rule 71.1(d), (SCRCP) appointed PCR counsel, where PCR counsel was to [ensure] that [all] grounds for relief were presented in the [first] application as required by State law. After the PCR court denied the first application Appellant appealed that decision, at which time he was represented by State statutory (Rule 71.1(g), SCRCP) appointed PCR appellate counsel, where that counsel raised the sole issue of Appellant being entitled to a direct appeal from his guilty plea.

The Applicant submits the State's corrective process is inadequate to protect his federal constitutional rights. An affirmative legal duty here is created by the South Carolina Constitution, art.I, §3; S.C. Code Ann. §17-27-60 (2003) and Rule 71.1(d) and (g), SCRCP.

It was appointed PCR counsels professional obligation to [ensure] that all available grounds for relief were raised in the initial PCR application.

An inadequate corrective process arises where the State

Procedure [Post Conviction Relief Actions, Rule 71.1(d), SCRPC] (1) does not afford indigent prisoners competent appointed PCR counsel; (2) the post conviction remedy does not ensure that appointed PCR counsel will ensure that [all] grounds available are included in the first application, and (3), the Rules of PCR are inadequately hospitable to the adequate development and litigation of federal constitutional claims. See Case v. Nebraska, 381 U.S. 336-37 (1965).

The South Carolina Rules of Post Conviction Relief Procedures Rule(s) 71.1(d) and (g), SCRPC may be construed as inadequate where, as here has deprived the Applicant of his [one] meaningful access to State post conviction or easily said "the applicant is deprived of his "one full bite of the apple." Id. The U.S. Supreme Court has held that prisoners have a constitutional right to meaningful access to state post conviction remedies and access to these remedies should not upon the decision of State appointed PCR counsel to "fail" to ensure that all available grounds for relief are included in the original application.

A guilty plea must be knowingly and voluntarily entered, Boykin v. Alabama, 395 U.S. 238 (1969), Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). During the first PCR the claim regarding the "felony-murder" rule was regarded by the PCR as "Further it is clear from the record that trial counsel researched the felony-murder rule and it is clear from trial counsel's testimony that he thoroughly researched and prepared the Applicant's case. First PCR Order (2005-CP-10-2111), thus Applicant contends PCR counsel "insufficiently raised this ground. During the plea colloquy the following was recorded:

Defendant: "...So, me, him, and others went to the Boathouse Restaurant with plans of robbing it. But no plans of anybody getting hurt. Like I said before and tell my lawyer, it was -- it was an accident. It wasn't on purpose like we was going there to hurt anybody, because there was no plans to get hurt. App.11, 1.3-13.

The Court: Well, all right. But now you have said some things that cause me some concern in regards to this matter.

The Defendant: Right.

The Court: A while ago, a few minutes while you were giving that recitation, you used the word "accident."

The Defendant: Right.

The Court: And then you also just said that your co-defendant, I believe you said, "poked" you and the gun went off. You're not pleading to accident.

The Defendant: I understand that, sir.

The Court: You're not pleading to your co-defendant poking you and the gun going off.

The Defendant: I understand that, sir.

The Court: The charge is that you [intentionally] fired that gun through that door and it hit and killing Mr. Ringwald.

Mr. Young: Your Honor, if I may, Under the "case law of South Carolina" on a **felony murder**, when anybody is engaged in the commission of a felony and a accident occurs resulting in a death. **that is the felony murder rule.** App.12, 1.5-23.

As is specifically seen in the above recorded colloquy, Appellant adamantly told the Plea Judge that the shooting was "not on purpose" and that it was no doubt, "an accident", App.11, 1.11. Interestingly the Plea Court raised concerns regarding Appellant's claim of the shooting being "accidental", yet the Court for reasons unknown couched the concern and went on with the plea by diverting Appellant's claim of "not on purpose" and "accident" into "the charge is you "intentionally" fired the gun, App.12, 1.18.

Appellant submits that he **only** entered the plea based on counsel's statement to the Court regarding the "felony-murder rule", "...when anybody is engaged in the commission of a felony and an **accident** occurs resulting in death that is the felony murder rule, App.12, 1.20-23.

Appellant submits that once he claimed "accident" the Court should have not accepted his plea, but also counsel should have objected. The underlying substantial claim is that there is no such "felony murder rule" of law. Further in *Lowry v. State*, 376 S.C. 499, 657 S.E.2d 760 (SC.Feb.11, 2008)(the court found counsel ineffective for failing to object to the trial court's supplemental charge on "felony murder doctrine", finding the charge impermissibly shifted the burden of proof in violation of the Due Process Clause). Further in support a case recently before this Court was *Kenyatta Bryant v. State*, Appellate Case No.2015-000950, a PCR case where there was good discussion on the "so called felony murder rule." Charile Johnson esquire represented Bryant at trial. Bryant was ultimately convicted under the "felony murder rule. Charlie Johnson testified that he

had practiced criminal law in South Carolina for 19 years and he was **not** aware of any felony murder rule in South Carolina. Id. PCR Counsel in Bryant's case even maintained that "Felony murder rule does **not** exist in South Carolina. Id Interestingly and should be noted, the Assistant Attorney General during Bryant's PCR hearing argued that "South Carolina was the only state in the country that has no "felony murder rule." Id (emphasis original and added). Clearly there is no such rule of law then counsel clearly rendered ineffective assistance in advising Appellant in front of the Plea Court that such a rule exists and should he go to trial he'd be convicted of the felony murder rule.

Appellant submits here that counsel's erroneous advice to Applicant after hearing the open colloquy of "actual innocence" to the Court was gross negligence and deficient performance under *Hill v. Lockhart*, 474 U.S. 52, 106 S.C.2d 366 (1985).

The failure of PCR counsel in first initial collateral review proceeding to adequately raise and present this claim is plainly ineffective assistance of counsel. *Washington v. State*, 324 S.C. 232, 478 S.E.2d 833, 835 (S.C.1996)(second PCR allowed due to ineffective assistance of PCR counsel). Appellant was denied his first bite at the apple where PCR counsel failed to ask the Court for relief on this claim. Other circuits has similarly held: statutory right to appointed counsel in post conviction cases means the right to competent counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). Applicant believes that he has carried his burden of showing his entitlement to a hearing into this matter, where the record supports that Appellant is actually innocent of the crime charged.

CONCLUSION

Based on the foregoing the case should be remanded back to the lower court with instructions to conduct a hearing into the matter, or in the alternative grant the relief deemed appropriate in the instant matter.

Respectfully Submitted,
/s/ Christian Gilliard
Christian Gilliard
Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Charleston County
Hon. Deadra L. Jefferson, Presiding
C/A No. 2015-CP-10-0213

JUL 21 2017

S.C. SUPREME COURT

Christian Gilliard -- Appellant,

-vs-

State of South Carolina -- Respondent,

RECORD ON APPEAL

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D). Final Order,.....18

Christian Gilliard
SCDC# 305883
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Appellant, pro-se

FORM 5

2015-CP-10-213

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christin Gilliard #305883)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

FILED
2015 JAN -9 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst., 430 Oaklawn Rd., Pelzer, SC
2. Name and location of Court which imposed sentence Charleston County General Sessions
3. Name(s) of co-defendant(s) (if any) Kendrell Hedit
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-10-6771 (murder)
 - (b) 2003-GS-10-6772 (attempted armed robbery)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 1, 2004 (30-years for murder)
 - (b) November 1, 2004 (20-years attempted armed robbery)

1

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. n/a
- ii. n/a
- iii. n/a
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. n/a
- iii. n/a
- (c) the date of each such result:
- i. n/a
- ii. n/a
- iii. n/a
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. n/a
- iii. n/a
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) counsel did not file a notice of appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Ineffective Assistance of Counsel;
- (b) manifest miscarriage of justice
- (c) actual innocence of the crime and sentence

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) counsel advised me to plead guilty under the theory that if I-
- (b) didn't I would be found guilty at trial under the "felony murder"-
- (c) rule, to which there is [no] such rule in law. Lowry v. State, 376 SC. 499, 657 S.E.2d 760 (-

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Post Conviction Relief (2005-CP-10-2111)
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Charleston County Court of Common Pleas
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. denied relief
 - ii. _____
 - iii. _____

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- iv. _____
- (d) the date of each such disposition:
 - i. March 27, 2007
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. unknown (unavailable)
 - ii. _____
 - iii. _____
 - iv. _____

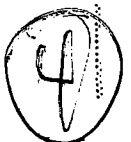
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
just ineffective assistance of counsel

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. ineffective assistance of counsel at first PCR
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. PCR
 - ii. _____
 - iii. _____

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) it was not available then, Lowry established that there is no
- (b) "felony murder" rule in this state in (2008) and was not
- (c) available at the time, now under §17-25-45(c) this issue is raised.

17. Were you represented by an attorney at any time during the course of:



- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~xxx~~ Kathrine Hudgins on appeal from first PCR
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Boyd Young, Esquire
 - ii. 100 Meeting St. 5th Floor, Charleston, SC. 29401
 - iii. Kathrine Hudgins, SC. Indigent Defense
- (b) the proceedings at which each such attorney represented you:
 - i. trial counsel
 - ii. _____
 - iii. PCR appellate counsel

19. State clearly the relief you seek in filing this application:

vacate sentences and convictions and remand for new proceedings,
or whatever relief this Court deems just and appropriate in the instant.

20. Are you now under sentence from any other court that you have not challenged?
no



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Christin Gilliard #305883

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Christin Gilliard
Applicant

SWORN or affirmed to and subscribed before me this

30th day of December, 2014.

Nancy C. Muchant
Notary Public

My Commission Expires: ^{NCH}01-23-2023



STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville,)

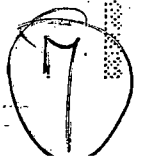
I, Christin Gilliard #305883, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Christin Gilliard

SWORN to and subscribed before me this 30th
day of December, 2017.

Nancy C. Muddat (L.S.)
Notary Public

My Commission Expires: 01-23-2023



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)
Christian Gilliard, #305883,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-10-0213

**RETURN AND MOTION TO
DISMISS**

In response to the post-conviction relief application filed January 9, 2015, the Respondent would show this Court:

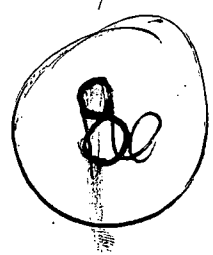
I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the October 2003 term of the Charleston County Grand Jury for Murder (2003-GS-10-6771) and Attempted Armed Robbery (2003-GS-10-6772). He was represented by Boyd Young, Esquire. On November 1, 2004, the Applicant pled guilty as indicted. He was sentenced by the Honorable Thomas L. Hughston, Jr. to confinement for a period of thirty (30) years for Murder and twenty (20) years for Attempted Armed Robbery. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

First PCR Application: 2005-CP-10-2111

The Applicant filed his first application for PCR on May 16, 2005, in which he raised the following grounds for relief:

1. Ineffective assistance of counsel



- a. "My counsel representation fell below an objective standard of reasonable probability that, but for my counsel's errors, I would have not pled guilty and would have insisted on going to trial."
2. "There was evidence of material fact, not previously presented and heard, that requires vacation of the conviction or sentence."
3. "The conviction or the sentence was in violation of the Constitution of the United States or the Constitution of South Carolina."

The State made its Return on August 15, 2005. William Runyon, Esquire, represented the Applicant. An evidentiary hearing was convened on March 12, 2007. By Order dated March 23, 2007, the Honorable Roger M. Young denied and dismissed the application with prejudice.

The Applicant then filed a notice of appeal. Katherine Hudgins, Esquire, represented the Applicant in the matter. Counsel for the Applicant then filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), in which she raised the following issue:

1. Did the Post-Conviction Relief Judge err in refusing to find that the applicant was entitled to a belated appeal pursuant to White v. State?¹

After a review of the Johnson petition, the South Carolina Court of Appeals denied the petition and granted counsel's motion to be relieved. The Remittitur was issued on June 29, 2009.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel advised me to plead guilty under the theory that if I didn't I would be found guilty at trial under the "felony murder" rule, to which there is no such rule in law Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008).
2. "Manifest miscarriage of justice"
3. "Actual innocence of the crime and sentence"

¹ White v. State, 263 S.C. 110, 208 S.E.2d (1974).



For the purpose of this Return, the Respondent incorporates the Applicant's current application, Applicant's previous PCR application and appellate records by reference, and the Clerk of Court's records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

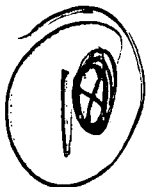
III.

The Respondent submits 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). The Applicant pled guilty to the offense(s) he challenges in this Application on November 1, 2004. Therefore, the Applicant was required to file his application by November 1, 2005. This Application was filed on January 9, 2015, which was well after the statutory filing period had expired.

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, the Respondent requests that this Court summarily dismiss the application for Post-Conviction Relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Court should summarily dismiss the current Application because it is also successive to the previous application for PCR. Successive applications for PCR 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." 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 application. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

for J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

Columbia, South Carolina

October 2, 2015

12

AG AT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
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Christian Gilliard, #305883,)
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Applicant,)
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v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2015-CP-10-0213

CONDITIONAL ORDER OF DISMISSAL

FILED
OCT-9 AM 11:51
JULIE H. CLARK, CLERK
CLERK OF COURTS

This matter comes before this Court by way of an application for post-conviction relief filed January 9, 2015.

Procedural History

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Handwritten signature/initials

13

1. Ineffective assistance of counsel
 - a. "My counsel representation fell below an objective standard of reasonable probability that, but for my counsel's errors, I would have not pled guilty and would have insisted on going to trial."
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II.

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

1. "Ineffective Assistance of Counsel"

- a. "Counsel advised me to plead guilty under the theory that if I didn't I would be found guilty at trial under the "felony murder" rule, to

¹ White v. State, 263 S.C. 110, 208 S.E.2d (1974).

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which there is no such rule in law Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008).

2. "Manifest miscarriage of justice"
3. "Actual innocence of the crime and sentence"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

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 S.C. Code § 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; therefore, he has failed to meet the burden imposed upon him. Land v. State,

274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally 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. 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 judgement 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). The Applicant pled guilty to the offense(s) he challenges in this Application on November 1, 2004. Therefore, the Applicant was required to file his application by November 1, 2005. This Application was filed on January 9, 2015, which was well after the statutory filing period had expired.

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."

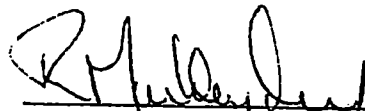
Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

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
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 7th day of October, 2015



R. MARKLEY DENNIS, JR.
Chief Administrative Judge
Ninth Judicial Circuit

Monko Cornu, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Christian Gilliard, #305883,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-10-0213

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 9, 2015. Respondent made its return on October 2, 2015, requesting the application be summarily dismissed as successive and based upon the expiration of the statute of limitations.

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 October 7, 2015, and filed October 9, 2015, 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 November 24, 2015, serving the above mentioned Conditional Order of Dismissal on Applicant.¹

In a document captioned "Opposition and Reply to the Court's Conditional Order" dated November 9, 2015, Applicant again argues that he should be entitled to a hearing because he is asserting an allegation of ineffective assistance of PCR counsel on the basis that PCR counsel

¹ Respondent informs this Court that it recently conducted an audit of the open PCR cases in the Ninth circuit and discovered that a final order of dismissal had never been signed in this case. Respondent informs this Court that this is the reason for its delay in submitting the final order of dismissal for this Court's review.

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did not raise the issue in his first PCR that his plea counsel was ineffective for advising him to plead guilty to “escape being convicted under the felony murder rule.” Applicant also argues that his is actually innocent.

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 November 1, 2004, and did not appeal his guilty plea or sentence. Because this action was filed on January 9, 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 second 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). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on March 12, 2007. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). (“[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

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 _____ day of _____, 2017.

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

_____, South Carolina.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Hon. Deadra L. Jefferson, Presiding
C/A No. 2015-CP-10-0213

RECEIVED

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S.C. SUPREME COURT

Christian Gilliard -- Appellant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Written Explanation on the attorney for Respondent, Assistant Attorney General, Alicia A. Olive.

This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 16 day of July, 2017.

Parties Served:

S.C. Supreme Court
Daniel Shearouse, Clerk
P.O. Box 11330
Columbia, SC. 29211

Assistant Attorney General
Alicia A. Olive
P.O. Box 11549
Columbia, SC. 29211

Respectfully Submitted,

/s/ Christian Gilliard
Christian Gilliard

Appellant, pro-se