

Paul Anthony Rice #262913
Goodman Corr. Inst.
4556 Broad River Road
Columbia, S.C. 29210

August 17, 2017

RE: Filing Notice of Appeal


RECEIVED

AUG 21 2017

SC Court of Appeals

Dear Clerk of Court,

Find enclosed the Notice of Appeal
that needs filing, clocked stamped dated, and a copy returned
to me for my records please.

s. 

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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
IN THE COURT OF COMON PLEAS, SIXTH JUDICIAL CIRCUIT

Honorable Brian M. Gibbons, Presiding Judge

Case No. 2016-CP-20-00187

Paul Anthony Rice, #262913.....Appellant

v.

State of South Carolina,Respondent

RECEIVED

AUG 21 2017

SC Court of Appeals

NOTICE OF APPEAL

Paul Anthony Rice, Appeals the final Order of
dismissal of his 2nd P.C.R, filed July 20, 2017.

Dated August 17, 2017


S. _____

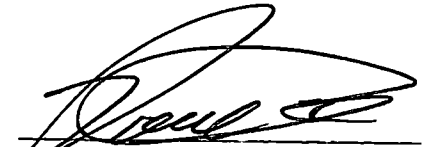
Paul A. Rice #262913
Goodman Corr. Inst
4556 Broad River Road
Columbia, S.C. 29210

PROOF OF SERVICE

I certify that I have this 17, day of August, 2017 VIA U.S. Mail, served a Notice Of Appeal to the S.C. Court of Appeals at 1015 Sumter Street, Columbia, South Carolina 29201, S.C. Attorney Generals Office Att. Megan Harrigan Jameson P.O.Box 11549, Columbia, S.C. 29211-1549, and Fairfield Clerk Of Court, The Honorable Judy Bonds, P.O. Drawer 299, Winnsboro, S.C. 29180-0299

Dated August, 17 2017

s.



Paul A. Rice #262913
Goodman Corr.Inst.
4556 Broad River Road
Columbia, S.C. 29210

RECEIVED

AUG 21 2017

SC Court of Appeals

Paul A. Rice #262913

Goodman C.I. B1-32B

4556 Broad River Rd

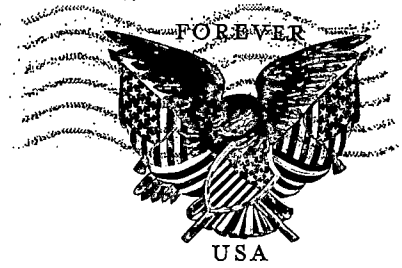
Columbia, S.C 29210

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S.C. Court of Appeals

1015 Sumter Street

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AUG 21 2017

Columbia, S.C 29201 SC Court of Appeals

29201-374905



STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Paul Anthony Rice, #262913,
Applicant,

2017 JUL 20 AM 10:42
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BROWN

2016-CP-20-00187

v.

FINAL ORDER OF DISMISSAL

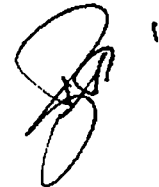
State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed May 5, 2016, by Paul Anthony Rice (Applicant). Respondent made served its Return and Motion to Dismiss on March 2, 2017, requesting the application be summarily dismissed based Applicant's failure to comply with the statute of limitations pursuant to S.C. Code Ann. §17-27-45, failure to state a claim upon which post-conviction relief can be granted, and failure to satisfy his burden of proof as to newly discovered evidence, and as successive to his prior post-conviction relief applications.

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 March 17, 2017, and filed March 24, 2017, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. This Conditional Order of Dismissal was personally served on Applicant on April 17, 2017; a copy of the Affidavit of Personal Service is attached to this Order.

Applicant has filed numerous responses to Respondent's Motion to Dismiss and this Court's Conditional Order of Dismissal. On March 16, 2017, Applicant filed a document



captioned, "Objection(s) and Reply to Motion to Dismiss." In this document, Applicant asserts his application is not successive to his prior post-conviction relief action, despite clearly being his second application, because he did not discover the alleged plea offer until after his first post-conviction relief action had been filed. Additionally, he submits he has also satisfied the standard for newly discovered evidence because he claims the warden of his prison asked him "why didn't he take the deal" and stated he was "pretty sure that there was a plea deal because he didn't feel like [Applicant] should have to do 25 years." Applicant also asserts his application should be considered timely because he filed within four months of the denial of his appeal from his first post-conviction relief action. Regarding his allegations of ineffective assistance of prior PCR counsel, Applicant "agrees with the Respondent's analysis, and therefore does not object to the summary dismissal of this allegation."

Thereafter, on April 11, 2017, Applicant filed his "Objection to Conditional Order of Dismissal," making the same responses as in his March 16, 2017 filing in objection to the motion to dismiss.

This Court has reviewed Applicant's two filings and finds Applicant has failed to provide a sufficient basis for why this Court's Conditional Order of Dismissal should not become final. Initially, Applicant has failed to present a sufficient showing as to why his application is not timely pursuant to S.C. Code Ann. §17-27-45. Applicant's assertions that his application is timely because he filed within one year of the conclusion of his appellate challenge of his initial post-conviction relief application are without merit. Furthermore, Applicant has failed to make a sufficient showing of newly discovered evidence as required for relief. Before the Court will hold an evidentiary hearing, the 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.

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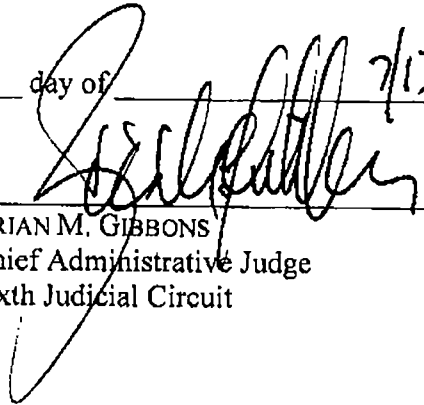
385, 140 S.E.2d 784 (1965). Applicant has entirely failed to make such a prima facie showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

Based on the foregoing, this Court finds 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 this Court's Conditional Order of Dismissal, the post-conviction relief application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order if he wishes to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this _____ day of _____ 7/13, 2017.



BRIAN M. GIBBONS
Chief Administrative Judge
Sixth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA FAIRFIELD COUNTY IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD CLERK OF COURT SIXTH JUDICIAL CIRCUIT

Paul Anthony Rice, #262913, 2017 MAR 24 PM 1 13 2016-CP-20-00187

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed May 5, 2016.

I. PROCEDURAL HISTORY

The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. Applicant was originally indicted by Fairfield County in November 1996 on a trafficking charge. On June 11, 1997, this charge was dismissed. Applicant was then arrested on a federal warrant and charged in a federal criminal complaint which alleged the same criminal activity alleged in the state charge. He was indicted by a federal grand jury on August 21, 1997, for conspiracy to possession with intent to distribute crack cocaine. The federal charges were dismissed because of a violation of the Speedy Trial Act.

Applicant was then indicted by the State Grand Jury in May 1999 for trafficking in crack cocaine conspiracy and trafficking in cocaine. Applicant was represented on the charges by Gwendlyne Young Smalls, Esquire, and Jerry M. Screen, Esquire. Applicant proceeded to a jury

trial on November 22-24, 1999, before the Honorable Williams Keesley, where he was convicted as indicted. Judge Keesley sentenced Applicant to twenty-five (25) years' imprisonment.

Direct Appeal

Applicant appealed his convictions and sentences and was represented by Glenn Walters, Esquire. Applicant raised the following issue:

The trial court lacked jurisdiction to try the defendant under the state grand jury indictment because the federal court had dismissed the same charges with prejudice.

Counsel Walters relied upon S.C. Code § 44-53-410 as a bar to prosecution. The State filed its Final Brief of Respondent on April 2, 2001. Applicant filed a reply brief on March 6, 2001. By letter dated September 10, 2001, the parties were called on to submit supplemental briefing on the issue of whether S.C. Code § 44-53-410 "raises an issue of subject matter jurisdiction, or creates an affirmative defense which must be raised to and ruled upon by the trial court." The State filed a supplemental brief on September 24, 2001. Applicant filed his supplemental brief on October 5, 2001. On December 20, 2001, the South Carolina Court of Appeals affirmed the convictions and sentences in State v. Rice, Opinion No. 3431 (S.C. Ct. App. filed December 20, 2001). Applicant filed a petition for rehearing and a petition for rehearing *en banc* on January 16, 2002, which were denied on February 22, 2002. Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court. Certiorari was denied on September 19, 2002, and the remittitur was issued on September 23rd.

2003-CP-20-081

Applicant subsequently filed an application for post-conviction relief on March 5, 2003. Respondent filed its return on or about April 28, 2004, where he alleged numerous allegations of

ineffective assistance of counsel. An evidentiary hearing was convened on August 25, 2009, at the Fairfield County Courthouse before the Honorable Roger M. Young. Applicant was present and represented by Melissa J. Kimbrough (now "Armstrong"), Esquire. The State was represented by then Assistant Attorney General Michelle Parsons Kelley. On November 3, 2009, Judge Young issued an Order of Dismissal denying relief, filed November 6, 2009. Applicant then filed objections to the order on December 3, 2009, which were construed as a motion to amend. The State made its return to the motion on December 11, 2009. Judge Young denied the motion by order dated December 14, 2009, and filed on December 16, 2009.

Applicant filed a timely notice of appeal. Counsel Armstrong continued to represent Applicant on appeal. Counsel filed a petition for writ of certiorari in the Supreme Court of South Carolina on September 10, 2010, and raised the following issues:

- 1) Did the Circuit Court err in ruling trial counsel was effective despite his failure to argue S.C. Code Section 44-53-410 (1985) barred applicant's second prosecution in state court after his case was dismissed with prejudice in federal court?
- 2) Did the Circuit Court err ruling Trial counsel was effective despite their failure to raise the issue of law enforcement's improper search of applicant's parent's home, which yielded the state's only evidence of applicant's constructive possession of drugs?
- 3) Did the Circuit Court err[] in ruling trial counsel was effective despite his burden-shifting opening statement in which he told the jury that applicant was in court to "answer" the charges against him, and that it was "his time" to answer the charges?
- 4) Did the Circuit Court err in ruling trial counsel was effective despite failing to object to prejudicial testimony, including: hearsay from Spencer Heath concerning an unidentified lawyer's remark about setting up a

“deal;” prejudicial testimony from Evangelist Mobley concerning crack cocaine; prejudicial testimony from Lennie Mack concerning applicant’s mother’s alleged attempt to drive over him; Robert Coleman’s testimony concerning an unrelated drug conspiracy, the solicitor’s pitting [] state’s witnesses against defense witnesses Lakiesha Rice and Marcel Sanders, and numerous improprieties during the solicitor’s closing argument, including vouching on behalf of state’s witness Spencer Heath and making “golden rule” arguments?

The State made its return to the petition on January 12, 2011. By order dated January 13, 2012, the Supreme Court of South Carolina transferred the case to the court of appeals. On November 1, 2013, the court of appeals denied the petition. Applicant was barred from seeking further review in the Supreme Court of South Carolina. Ellison v. State, 382 S.C. 189, 191, 676 S.E.2d 671, 672 (2009) (“we take this opportunity to extend our decisions in Haggins and Missouri to cases in which the Court of Appeals has issued an order denying a writ of certiorari in a PCR matter”). The South Carolina Court of Appeals issued the remittitur on November 21, 2013

2014-cv-00185

Applicant then filed a *pro se* petition for writ of habeas corpus on January 24, 2014, in federal district court. Applicant raised the following issues verbatim:

1. Petitioner was Denied Effective Assistance of trial counsel in violation of the U.S. Constitution 6th and 14th Amendments.
 - a. That the State Court’s determination in ruling aht trial counsel was not ineffective for failure to argue that his prosecution in state court was barred after his case was dismissed “with prejudice” in federal court. As there was no pending prosecution and the State Government impaneled a Grand jury after the Honorable Mattew J. Perry’s order (see Attached impanelment order, and Memorandum of Law in Support of Petitioner).
2. Petitioner was denied effective assistant of trial counsel in violation of the U.S. Constitution 6th and 14th Amend.
 - a. That the State Court’s determination in ruling that trial counsel was no ineffective for failure to object to law enforcements improper search of

Petitioner's parent's home, which yielded the State's only evidence of Petitioner's constructive possession of drug charges, where as, a circuit judge made "in limine" ruling before trial and counsel failed to renew the petitioner's motion to suppress.

On August 18, 2014, the State filed a return and motion for summary judgment. The State submitted an Amended Return correcting formatting errors in the filing on August 22, 2014. The district court granted the State's Motion for Summary Judgment on March 26, 2015, and dismissed the petition. Applicant then filed a notice of appeal on April 3, 2015. The United States Fourth Circuit Court of Appeals issued an opinion dismissing the appeal on June 23, 2015.

CURRENT APPLICATION

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to inform of a plea offer (discovered after the 1st PCR)
2. Ineffective assistance of counsel (PCR)
 - a. Was not entitled to a full and fair opportunity to present claims.

Before this Court are the records of the Fairfield County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

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 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).

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 (2003). 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). Applicant was convicted of the offenses he challenges on October 17, 1996. The remittitur to Applicant's direct appeal was issued on September 23, 2002, so he was therefore required to file his application on or before September 24, 2003. This Application was filed on May 5, 2016, which was over thirteen (13) years 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) (2003) 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 summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

Newly Discovered Evidence

Applicant's claim that he was not conveyed a plea offer made by the State constitutes a claim of newly discovered evidence. This allegation is vague and fails to make a *prima facie* showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant has failed to set forth with any specificity what the evidence is, how it would have affected the outcome if used at

trial, or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, the 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 entirely 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.

Ineffective Assistance of Prior PCR Counsel

Finally, the Applicant alleges ineffectiveness on the part of prior PCR counsel in presenting the 2006 PCR application. These contentions of ineffective assistance of collateral counsel are not recognized grounds for relief in a successive state PCR action. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under ' 17-27-90.” Aice, 305 S.C. at 451, 409 S.E.2d at 394. Therefore, this Court finds that this allegation should be summarily dismissed.

III. 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

