

RECEIVED

OCT 23 2017

S.C. SUPREME COURT

David E. Rhodes, Sr.
Waterloo Corr. Inst.
Post Office Box 189
Rember, S.C. 29128

October 18th, 2017

In the care of: Brenda F. Shealy;

Hon. Chief Justice Beatty
Supreme Court Chief Justice

Post Office Box 11330

Columbia, South Carolina

29211

Re: C/A No: 16-CP-43-01233

Excessive Inordinate Delay
of 59(e) motion still pending.
and Erroneous Order.

Dear Honorable Chief Justice,

Please upon receipt of such, find enclosed, an original copy
of petitioners motion of opposition to Respondants Conditional
Order of Dismissal and Return; dated June 26th, 2017.

Which was received and clock-date-stamped, June 30th, 2017, by
James C. Campbell Sumter County Clerk of Court.

Further, petitioner directs the courts attention to the delay between the July 18th, 2017, signing of conditional order by Judge Dickson; and receipt by petitioner; By way of SCDC server of process on, October 3rd, 2017.

It stands to reason the petitioners Oppositional Motion of June 30th, 2017; has not been adjudicated, although filed properly without finality on the merits, nor lodged in the Sumter County Public Index.

Aggravating petitioners State Corrective Process even more. At which, Due Process violations are apparent. Petitioner's rights) pursuant to 17-27-90, of S.C. Code of Laws; are in question on the grounds within said petition, that's now signed. Disregarding the accordance of Rules), principles, statutory provisions, or procedural law legality.

Finally, the petitioner feels that this information was withheld from the court, and is now out in clear view.

Petitioner trusts and believes that justice will prevail in this matter, as he has brought his case before the highest state court, without federal intervention.

Please review the enclosed material before submission of remittitur.

Let me hear from you.

cc: File Sincerely,

X David E. Rhodes, Sr.
David E. Rhodes, Sr.
189498

Notice: Evidentiary
Recording Requested!

RECEIVED

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S.C. SUPREME COURT

~~Wine~~

David E. Rhodes, Jr. 189498

Waterree Corr. Inst.

D2 - A

Post Box 189

Ambert, South Carolina

29128

Attn: The Hon. James C. Campbell;

Clerk Of Court

215 N. Harvin St.

Sumter, South Carolina

29150

Re: CIA No: 16-CP-43-01233;

~~Motion of opposition to the~~
~~Respondents, Conditional Order~~
~~of dismissal.~~

Dear Hon. Campbell;

Please, find enclosed upon receipt, an original cover sheet, with Table Of Contents, a motion of opposition, Noticers, and a Certificate Of Service, to be "Clocked-date-stamped," filed by your office and a Clocked in copy of the same returned to me as soon as possible.

Respectfully submitted,
David E. Rhodes, Jr.

David E. Rhodes; 189498

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State of South Carolina In The Court Of Common
County Of Sumter Pleas 3 Judicial Circuit

David E. Rhodes, Sr.
Applicant

- Vs. -

The State Of South
Carolina Respondant

C/A No: 16-CP-43-01233

Motion of opposiotion,
to the Respondants,
Conditional Order
of dismissal

Please, be advised, and informed, and take "Notice" that
the applicant, in the here in legal action, would hereby,
so respectfully, move before this Honorable court; in accordance
with Rules, and principle, to so

opposse, the respondants, Conditional Order of dismissal,
n its entirety, and to totally refute, and rebutt such.

To, first and foremost, contend that, pursuant to S.C. Const.
Art. 1, sect. 14, as a matter of right, that this action should
not be dismissed, without the applicant having an evidentiary

hearing, and being duly heard, first on the merits.

Further, Respondants has somehow or another totally
misconstrued all applicant's issues, to be a claim of
ineffective assistance of Counsel, that were "unrelated"
to such, which should be grounds for procedural default-

against the state.

History

Applicant's circumstance and relevant situation at hand, is that there is an, "Excessive Inordinate delay," of his 59(e) motion to Alter or Amend, "Clocked-date-stamped," file Feb. 16, 2011, that has been open, and

unadjudicated on the merits, pertinent still yet; applicant was very much so abandoned, at a critical and crucial stage; by (P.C.R.) Counsel T. Brooks, refusing to submit applicant's Notice of adjudicated Facts, and 59(e) motion, when the (30) Thirty-day, deadline window, was still open for filing such motions.

Argument

Subsequently, obviously and perspective, the applicant was left with no other choice, or alternative, than to personally submit and file both motion, with the clerk's office, of Sumter County.

Among other things, P.C.R. counsel T. Brooks; Ironically had applicant's case transferred over to the court of Appeals within days, of the issuance of the order of dismissal making allotment for the applicant to be able to proceed pro-se

There fore as a mere matter of Law, any issue, or argument, regarding any hybrid representation would be -

ured, in that counsel had submitted and Filed a Writ of Certiorari, on behalf of the applicant, Officially, relieving himself, pursuant to the rules).

... quoting Hudson Vs. Hudson, "Appellate Court, did not deprive lower court of Jurisdiction to hear Pending rule 59(e) motion.

In that, Counsel T. Brooks, failed to properly and fully assist as the Rules dictate during such P.C.R. proceedings, only gave way to, "procedural de fault," of p.e.B. Counsel, in violation of rules 21.1(c)(e)(g).

"... P.C.R. counsel must assist and perfect an appeal.

In addition, Applicant has Furthered Suffered governmental Abuse, of procedural de fault, From both P.C.R. counsel and Appellate Counsel, as well as the State.

Applicant, contends, Further that the respondents return and conditional Order of dismissal does not refute and / or rebutt, applicant's arguments that his issues were never adjudicated and ruled on the merits by the lower court,

thus procedurally de faulting applicant's case further. Citing Murray Vs. Carrier; 103 S.Ct.

Among other things; incorporated, applicant's issues; relevant to P.I. Glenn Herrell, were never given and/or received by applicant, nor adjudicated and addressed on the merits by the P.C.R. court when raised, that is now additionally a part of the record.

"... Evitts - Vs. - Lucey; 105 S.Ct. "Absolute right to appeal; and appellate counsel.

"There is no, (per se) absolute constitutional right to P.C.R. counsel; but the rules dictate his/her job duties; thusly being protocol, of a procedural process and/or mode of law, ...

That is established and recognized or cognizable as a known right under the 14th Amendment to the U.S. Constitution, Equal protection, clause, Rules and principles (Due process).

See; Gideon - Vs. - Wainwright; 83 S.Ct.

Furthermore, applicant argues that, there was a "Conflict of Interest", if not far worse a Jurisdictional related issue, with Judge Ferrell E. Cothran, Jr.; whom was applicant's, prior sentencing Judge in his criminal - proceedings, but now Chief administrative Judge; of the same circuit, making Inference, as to whom should entertain, the applicant's P.E.R. proceedings, of which raises, some very core concerns as to, and regarding any partiality, and/or bias; if not even a possibility of conspiracy, in the matter.

Pertinent; still yet to the Subject's Matters, Applicant sister had additionally submitted Sworn affidavits, attesting to the Fact of the matter, that Counsel, Charles T. Brooks, did in fact create a conflict of interest.

Counsel T. Brooks acted, capriciously by not subpoenaing witness requested by applicant; being Cassandra Gibbs, or Blonshas Samuel, for the Oct. 29, 2010 P.C.R. hearing; these witnesses were actually in attendance during such P.C.R. hearing.

Conclusion

In, Summary and closing, to conclude that the applicant, has incorporated, all the necessary, factual legalities, and provide specific reasoning, unto this honorable court, in such motion of opposition, and

Further, puts on Notice, and request that an evidentiary hearing be held on the record, before any finality, or disposition of such is done, as the applicant has a right to be "duly heard", prior to any dismissal and/or denial, and request that such result be Favorable.

State of South Carolina
County of Sumter

In The Court of Common
Pleas **RECORDED** Judicial Circuit
2017 JUN 30 AM 10:18

David E. Rhodes; Sr.
applicant

JAMES C. CAMPBELL - CP-43-01233
CLERK OF COURT
SUMTER COUNTY, S.C.

-vs.-

Certificate of Service

State of South Carolina
Respondents

That I, David E. Rhodes Sr. Certify, and declare under the penalty of perjury; that I have served on the following address below; An opposition, to the respondents, Conditional Order of dismissal; on this 26th day of June 2017; by depositing such in the Waterree Corr. Inst. Mail room Office.

Has sworn to and subscribed
before me Judith C. Deubray this day
26th June 2017.

My Comm. Exp: March 22nd 2024

David E. Rhodes Sr.
David E. Rhodes; Sr. 189498
Waterree Corr. Inst.
D2-A
P.O. Box 189
Pembert, South Carolina 29128

Original: Hon. James C. Campbell;
Clerk of Court
215 N. Harris St.
Sumter, South Carolina
29150

cc: Hon.
Edgar W. Dickson;
C.A.J.
1st Jud. Circuit
cc: A.G.'s Office
P.O. Box 11549
Columbia, S.C.
29211

Applicant filed his first application for post-conviction relief on December 8, 2008, alleging that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Court appointed counsel made no independent investigation of case."
2. "Not exercising second and third post-trial remedy."
 - a. "I ask counsel to allow me to negotiate a better plea with the judge and was denied that right."

Respondent made its Return on April 10, 2009. An evidentiary hearing into the matter convened on October 29, 2010, at the Sumter County Courthouse. Applicant was present and represented by Charles T. Brooks, III Esquire. Respondent was represented by Mary S. Williams, Esquire, of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel Timothy Murphy, Esquire also testified. On January 25, 2011, the Honorable W. Jeffrey Young, denied and dismissed the application with prejudice.

A timely notice of appeal was filed on February 4, 2011. On October 21, 2011, Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed a Johnson¹ Petition for Writ of Certiorari. The issue on appeal was "whether Counsel's performance was constitutionally deficient for failing to make an independent investigation of Petitioner's murder case prior to Petitioner's trial date and subsequent plea on the day of trial?" By written order dated January 23, 2014, the South Carolina Court of Appeals denied the petition. The Remittitur was issued on February 11, 2014.

0:14-428-MGL-PJG

Subsequently, Applicant filed a *pro se* Petition for Writ of Habeas Corpus on February 10, 2014. Respondent filed its Return and Motion for Summary Judgement on June 11, 2014 (C/A No. 0:14-428-MGL-PJG). In his Petition, Applicant set forth the following grounds:

¹ Johnson v. State, 294 S.C. 310, 310, 364 S.E.2d 201, 201 (1988).

1. Ineffective Assistance of Counsel.
2. Fabrication of Evidence.
3. Necropsy Report/Autopsy based on Hearsay.
4. Invalid Murder Indictment

The Honorable Paige J. Gossett, United States Magistrate Judge, issued on January 9, 2015 a Report and Recommendation that Respondent's motion for summary judgment be granted. Applicant timely filed objections. The Honorable Mary G. Lewis, United States District Judge, denied Applicant's Petition on February 12, 2015, and accepted the Report and Recommendation for summary judgment.

Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals. Applicant preceded pro se. The Court of Appeals dismissed the appeal by unpublished opinion on May 27, 2015. Following the dismissal of his appeal, Applicant filed a Petition for Rehearing and Petition for Rehearing *En Banc* on June 15, 2015. On April 25, 2016, the Supreme Court of the United States denied the petition.

CURRENT APPLICATION

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

1. Ineffective Assistance of PCR Counsel.
 - a. "Denied right to review first PCR application."

Also, before this Court are the records of the Sumter County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief action, Applicant's appellate records, and the records from this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of limitations

The application 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 (“the Act”). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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 and sentenced on March 3, 2008. Accordingly, Applicant was required to file this Application on or before March 3, 2009. Applicant did not file this Application until March 8, 2016, which was well beyond the statutory filing period.

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) 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 application is dismissed for failure to file within the time mandated by the Act.

Successive

The application should be summarily dismissed because it is successive to Applicant’s previous PCR application. Courts disfavor successive applications and place the burden on

applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 offense 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. § 17-27-70.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate 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 the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Respondent submits Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (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 (1991). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, “Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” Id. at 451, 409 S.E.2d at 395. Aice further held that “the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394.

Applicant's contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. Applicant received a hearing in his first post-conviction relief action and timely appealed therefrom. It is clear that Applicant enjoyed a complete adjudication on the merits of his original petition. Therefore, the current application is successive and barred under S.C. Code Ann. § 17-27-90.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have with the Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Julie A. Coleman, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 3rd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Sumter County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 18th day of July, 2017.



EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina





ALAN WILSON
ATTORNEY GENERAL

RECEIVED

SEP 26 2017

GENERAL COUNSEL

Waterce

September 22, 2017

RECEIVED

SEP 23 2017

W. RICH
WARDEN OFFICE

Jonathan Eckstrom
Department of Corrections
4444 Broad River Road
Columbia SC

Re: David Rhodes, Jr., #189498 v. State of South Carolina
2016-CP-43-1233

Dear Mr. Eckstrom:

Enclosed please find a Conditional Order of Dismissal on the above referenced matter. Please serve a copy on the inmate and return the enclosed affidavit of service to me.

Thank you for your cooperation in this matter and if you have any questions, please feel free to contact me.

Sincerely,

Julie A. Coleman

Assistant Attorney General

JAC:cey
Enclosure

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OCT 03 2017

W.R.C.I.
WARDEN OFFICE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221.

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated Robin Montgomery (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF)

On this 3rd day of October, 2017, I served the signed Conditional Order of Dismissal on Inmate David Rhodes, Jr., SCDC Inmate No. 189498 by delivering personally and leaving a copy of the same at Water River Correctional Institution, Rembert, South Carolina. Deponent is not a party to this action.

Robin Montgomery
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 3rd day of October, 2017
Amel D. Hatfield (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/15/2021

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, Water River Correctional Institution, Rembert, SC, Sumter County, South Carolina, this 3rd day of October, 2017.

[Signature]
Inmate Signature
SCDC No. 189498

List case number here
2016-CP-43-1233



Johnathan Rhodes, Sr. # 189498
Water River C.I.

P.O. Box 189

Rambert, South Carolina
29128



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In care of: Brenda F. Shealy,
Hon. Chief Justice Beatty
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