

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECEIVED

Bruce B. Thomas, #320186,

2016-CP-31-0115

OCT 23 2017

Petitioner,

v.

State of South Carolina,

Respondent.



ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS

SC Court of Appeals

This matter comes before the Court pursuant to the Petition for Writ of Habeas Corpus, filed by Bruce B. Thomas, (Petitioner) on July 1, 2016. Respondent filed a Return and Motion to Dismiss, requesting that this Court dismiss the petition because the allegations could have been raised in Petitioner's prior application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Lee County Clerk of Court. Applicant was indicted at the February 2007 term of the Lee County Grand Jury under a three count indictment (2007-GS-31-0023) for assault and battery with intent to kill ("ABWIK"), murder, and possession of a firearm during a crime of violence. Charlie J. Johnson, Jr., Esquire, represented Applicant. On February 15, 2007, Applicant pled guilty as indicted before the Honorable John C. Few. Judge Few sentenced Applicant to life imprisonment for murder¹ and to a concurrent term of twenty years for ABWIK, to be served concurrently. Applicant did not appeal his conviction and sentence.

Rgc

¹ The possession of a firearm was dismissed pursuant to S.C. Code Ann. § 16-23-490(A).

Certified as a True Copy
Teresa A. Brown
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

PCR Application: 2008-CP-31-0008

Applicant filed an application for post-conviction relief on January 11, 2008, in which he alleged that he was being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel;
 - a. Involuntary guilty plea,
 - b. Counsel failed to have mental evaluation done on Applicant
 - c. Counsel failed to investigate,
 - d. Inadequately apprised him of his rights and element of malice prior to plea.
2. Flawed indictment.

Respondent made its Return on or about May 20, 2008. On April 28, 2010, an evidentiary hearing was convened at the Sumter County Courthouse before the Honorable W. Jeffrey Young. Applicant was present and represented by Charles T. Brooks, III, Esquire. At the hearing Applicant testified on his own behalf. The State offered the testimony of Charlie J. Johnson, Esquire. Judge Young issued an order of dismissal, signed September 8, 2010, denying and dismissing all of Applicant's claims with prejudice.

Applicant filed a timely notice of appeal and a Petition for Writ of Certiorari was filed by Robert M. Dudek, Esquire, of the Office of Appellate Defense. Respondent made its Return to the Petition for Writ of Certiorari on July 8, 2011. On April 6, 2012, the South Carolina Supreme Court denied the petition. The Remittitur was issued on April 24, 2012.

Federal Habeas Petition: 9:12-01113-RBH-BM

On February April 24, 2012, Petitioner filed a petition for writ of habeas corpus in Federal District Court in the District of South Carolina. The State made its Return and Memorandum in Support of Summary Judgement on August 13, 2012. On January 4, 2013, the Honorable Bristow Marchant, United States Magistrate Judge, issued a Report and Recommendation recommending that the petition be dismissed and the State's motion for summary judgment be granted. Petitioner made objections to the Report and Recommendation.

On March 5, 2013, the Honorable R. Bryan Harwell, United States District Judge, affirmed the Report and Recommendation, and granted the State's motion for summary judgment. Applicant, on March 21, 2013, filed a motion to reconsider, which was dismissed by order dated April 11, 2013. Applicant subsequently appealed to the United States Court of Appeals for the Fourth Circuit, which was dismissed on September 24, 2013.

CURRENT PETITION FOR HABEAS CORPUS

In this petition for writ of habeas corpus, filed in the Lee County Circuit Court on April 22, 2015, Petitioner raises the following issues:

1. "Actually Innocence";
 - a. "The Court accepted the plea and entered judgement without determining that there was a factual basis for the plea."
 - b. "When Petitioner denied the element of malice during plea colloquy that the acted with malice and the State put forth no evidence in support of malice Petitioner has asserted his legal innocence by denying he acted with malice."

Before this Court are Petitioner's records from the Lee County Clerk of Court concerning the subject convictions, the South Carolina Department of Corrections' records, Petitioner's prior PCR records, Petitioner's Federal Habeas record, and the records of this action.

FINDINGS OF FACT AND CONCLUSION OF LAW

"A habeas corpus petition must support the requested relief." Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief

(PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. "Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review." Gibson at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Id. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), "must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts." Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is "broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention." Gibson at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court." Id.

Rgcj

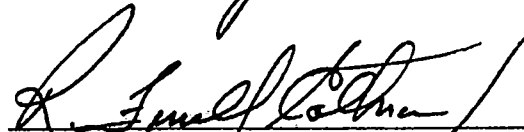
CONCLUSION

This Court agrees with Respondent that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 23 day of May, 2017.

Manning, South Carolina


R. FERRELL COTHAN JR.
Chief Administrative Judge
Third Judicial Circuit

State of South Carolina
County of LEE
IN THE COURT OF COMMON PLEAS
Third Judicial Circuit
2016-CP-31-0115

Bruce B. Thomas
Petitioner

Motion to Reconsider
Order of Dismissal

v.

State of South Carolina
Respondent

Now Come the Above-Named Petitioner Motion pursuant to Rule 59(e) for reconsideration of the Order Dismissing Petition for Writ of Habeas Corpus, and pursuant to Rule 52(b) Motion to Amend/Alter Judgment in dismissing Petition for Writ of Habeas Corpus, on May 23, 2017, which Petitioner received on June 6, 2017. In support of this motion Petitioner will show the following:

1 Petitioner did not receive the states return

- until June 4, 2017,
2. Petitioner did not receive a copy of the proposed order until June 4, 2017.
 3. Petitioner did not receive order of dismissal until June 4, 2017.
 4. U.S. Dist Ct. Rules D.S.C. CIV. RULE 7.10. DRAFT ORDERS Submitted by Counsel
- (B) General Standards. The Court may request proposed orders from counsels in compliance with the standards set forth below:
- (C) unless otherwise ordered opposing counsel will have fourteen (14) from the receipt, in which to comment to the court on the proposed order. Petitioner did not have an opportunity to respond to the proposed order of dismissal, Petitioner did not have an opportunity to address the States return.
- 4e. The Court has overlooked this fact as present in the petition for writ of Habeas Corpus. "When Petitioner denied the element of Malice during the colloquy that he acted with Malice and the State put forth no evidence in support of Malice Petitioner

has asserted his legal innocence by denying he acted with malice". Once Petitioner made this statement to the Plea Court, The Court was without jurisdiction to accept a plea from the Petitioner. The Plea Court lacked Subject Matter Jurisdiction. Lack of Subject Matter Jurisdiction cannot be waived, therefore a party may object to the Court's lack of jurisdiction at any time. Subject Matter Jurisdiction of a Court derives from either the Constitution or the Laws of the State and it cannot be conferred by Consent *American Agric Chem. Co. v. Thomas* 204 S.C. 355, 34 S.E.2d 592. This defense may not be waived and can be asserted at any time *State v. Grim* 533 S.E.2d 329.

This Court in its order of Dismissal confirms these facts see page 3 of the Order of Dismissal.

Conclusion

Based on the facts outlined in this Motion Petitioner prays this Court will order a hearing and the appointment of Counsel to address these very important issues.

Bruce B. Thomas

JUNE 8, 2017

State of South Carolina
County of LEE
2016 - CP - 31 - 0115

B. THOMAS
PETITIONER

Certificate of Service

v.

State of South Carolina
RESPONDENTS

Petitioner declares under the penalty of perjury, he printed a copy of his Motion to Reconsider order of Dismissal, to the parties listed below by U.S. Mail.

Clerk of Court
LEE County
P.O. Box 387
Bishopville, S.C. 29010

Bruce B. Thomas
Broad River Care Inst
4460 Broad River Rd
Columbia, S.C. 29210

The Honorable R. Ferrell Cochran Jr.
P.O. Box 32
MANNING, S.C. 29102

CC: FILE
DATED: June 8, 2017

Ms. Julie A. Coleman
P.O. Box 11549
Columbia, S.C. 29211

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STATE OF SOUTH CAROLINA
COUNTY OF LEE

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
)

Bruce B. Thomas, #320186,

) 2016-CP-31-0115
)
)

) Applicant,
)

) RETURN TO PETITIONER'S
) MOTION TO RECONSIDER
)

v.)
)

State of South Carolina,)
)

) Respondent.
)
)

This Court dismissed Petitioner's Petition for Writ of Habeas Corpus by an Order signed May 23, 2017, and filed June 5, 2017. Petitioner submitted his Motion to Reconsider the Order of Dismissal on June 8, 2017, alleging that he was not given the appropriate opportunity to respond to the State's proposed Order of Dismissal before his case was dismissed.

In response to the motion to reconsider, Respondent submits that the State properly served upon Petitioner copies of all correspondence, including the Return and Motion to Dismiss Petition for Writ of Habeas Corpus, all accompanying documents and records, the proposed Order Dismissing Petition for Writ of Habeas Corpus sent to the Court, and the signed Order sent to the Clerk of Court for filing.

Furthermore, assuming Petitioner is correct in his assertion that he did not receive these documents until June 6, 2017, the arguments presented in his response to the Order of dismissal do not entitle him to a hearing or the vacation of this Order. Therefore, Applicant's motion should be denied.

[signature page to follow]

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

2017-11-01-1133

RETURN TO THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA

Respectfully submitted,

ALAN WILSON
Attorney General

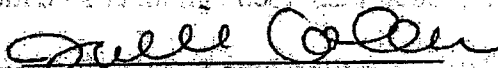
ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

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

By:



Attorneys for the Respondent

Columbia, South Carolina

July 12, 2017

STATE OF SOUTH CAROLINA
COUNTY OF Lee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-31-0115

Bruce B. Thomas

State of South Carolina

PLAINTIFF(S)

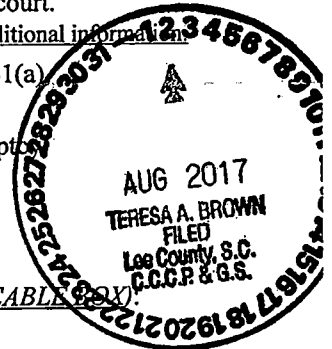
DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a) SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other



NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Signature]
Circuit Court Judge

2144
Judge Code

August 1, 2017
Date

