

Corey L. Williams #259070
Tyger River Corr. Inst.
200 Prison Road U-11, Rm 223
Enoree, Sc 29335

RECEIVED

DEC 07 2017

S.C. SUPREME COURT

December 1, 2017

South Carolina Supreme Court
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RE: Filing of Notice of Appeal

Dear Clerk:

Please find enclosed the Notice of Appeal in the attached case matter. I have filed the 60(b) motion with your Office out of an abundance of caution, where I filed a 59(e) prior to the receipt of the signed Final Order was received at the Institution. Please file the Notice and Motion 60(b) and return a stamp clock copy to me for filing. I thank you in advance.

Respectfully Submitted

Corey L. Williams

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Corey L. Williams, #259070,)
) C.A. No. 2013-CP-04-2353

Appellant,)

v.)

NOTICE OF APPEAL

State of South Carolina,)

Respondent.)

RECEIVED
DEC 07 2017
S.C. SUPREME COURT

The above named appellant, Corey L. Williams, hereby appeals the decision of the lower court filed November 14, 2017, and received on November 28, 2017 in the above entitled case number.

C

Respectfully Submitted

S/ Corey L. Williams

Corey L. Williams #259070

Tyger River Corr. Inst.

200 Prison Road U-11, Rm 223

Enoree, SC 29335

C.C. File

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Corey L. Williams, #259070,)
) C.A. No. 2013-CP-04-2353
Appellant,)

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

RECEIVED

DEC 07 2017

S.C. SUPREME COURT

The above named appellant, Corey L. Williams, hereby this date of November 29, 2017, serve the clerk of court with NOTICE OF APPEAL in the above captioned case. By placing in the United States mail postage prepaid the same addressed as follows:

South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Respectfully Submitted

s/ Corey L. Williams #259070
Corey L. Williams #259070

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

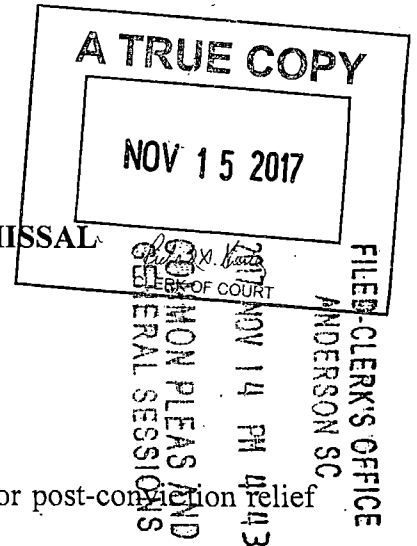
Corey L. Williams, # 259070,)
)
Applicant,)

C. A. No. 2013-CP-04-2353

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)



This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed by Corey L. Williams (Applicant) on October 29, 2013. Respondent made its Return and Motion to Dismiss on February 2, 2015, requesting the application be summarily dismissed as time barred, successive, and for failing to make a *prima facie* case of newly discovered evidence.

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 filed March 16, 2015, 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. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated March 31, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document entitled "Return From Applicant To Show Cause Why Pursuant to S.C. Code Ann. §17-27-70(b) This Current Applicant Should Not Be Dismissed With Prejudice," on April 10, 2015, in which Applicant claims double jeopardy. Subsequently, Applicant filed a document entitled "Notice of and Motion for Leave to Amend Post-Conviction

Application Pursuant to Rule 15(a) SC Rules of Civil Procedure,” on July 28, 2015, in which Applicant “seeks leave to Amend his application for Post-Convocation Relief, pursuant to Martinez v. Ryan, 132 S.Ct. 1309 (2012), and S.C. Code §17-27-45(a)” to include ineffective assistance of PCR counsel.

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

Successiveness

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 no reason why Applicant could not have raised this claim in his previous state PCR and/or federal habeas actions – and indeed it appears Applicant has raised many, if not all, of these allegations in prior actions.

Specifically, Applicant contends his conviction violated the Double Jeopardy Clause because the trial judge declared a mistrial, and the solicitor entered a *nolle prosequi* on the murder indictment. This Court has reviewed the clerk’s records pertaining to Applicant’s convictions, as well as the documents attached to Applicant’s response to the Conditional Order, and finds this claim to be wholly without merit. The record reveals Applicant is incarcerated on four separate charges – armed robbery, conspiracy, and possession of a weapon during a violent crime, for which he was convicted following a jury trial on June 7-10, 1999; and murder, for which he was convicted following a guilty plea entered on January 26, 2000. Applicant appears

to argue a mistrial was ordered as to all charges during his June 1999 trial, but the attached record Applicant himself provided clearly indicates the mistrial was declared as to the murder charge only. “A mistrial, because of the inability of the jury to agree on a verdict, is the same as if no trial had taken place and operates to prevent a plea of former jeopardy on the part of the defendant when called to trial again for the same offense.” State v. Gaskins, 263 S.C. 343, 347, 210 S.E.2d 590, 592 (1974) (citation omitted). Therefore, even if Applicant’s contention were true, the protection against double jeopardy would not apply in his case.

Further, Applicant claims the solicitor entered a *nolle prosequi* to the murder charge, which Applicant contends amounts to a dismissal of the indictment. “If, after a mistrial has been duly ordered, the prosecuting officer enters a *nolle prosequi*, such will not be a bar to a subsequent prosecution for the same offense.” Id. The document provided by Applicant indicates a *nolle prosequi* was entered on February 3, 2000, on indictment 2000-GS-04-0227. As the sentencing sheet also submitted by Applicant shows, Applicant pleaded guilty to the charge of murder contained in indictment 1999-GS-04-0808, on January 26, 2000. Therefore, it appears to this Court the *nolle prosequi* was entered on a separate indictment, after Applicant’s guilty plea had been accepted.¹

Finally, Applicant also contends the United States Supreme Court’s decision in Martinez v. Ryan, 566 U.S. 1 (2012), enables him to file a successive state PCR action alleging ineffective assistance of previous PCR counsel. This Court finds this contention to be wholly without merit as the ruling in Martinez has no bearing on an Applicant’s ability to raise ineffective assistance

¹ It is not even clear to this Court whether the Corey L. Williams charged under the 2000 indictment is in fact Applicant. As the transcript submitted by Applicant shows, there were two men of approximately the same age, both named Corey Lamont Williams, living in Anderson around the time of Applicant’s trial.

of collateral counsel claims in a subsequent, successive state PCR application. The South Carolina Supreme Court in Kelly v. State has specifically held that the rule of Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. 404 S.C. 365, 745 S.E.2d 377 (2013). Further, the Martinez Court itself specifically noted its decision did not address ineffective assistance of counsel claims raised in subsequent state PCR actions, opining it was not the case to resolve the question of whether a prisoner has a constitutional right to effective counsel in initial-review collateral proceedings. Id. at 8. Therefore, Applicant's contention Martinez allows him to bring successive state PCR application is erroneous. The South Carolina Supreme Court's opinion in Aice v. State is still applicable to a claim raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("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 went on to note that such a holding was in accord with the United States Supreme Court's opinion in Pennsylvania v. Finley, 481 U.S. 551 (1987) (finding there is no constitutional right to counsel for collateral review of a conviction). Applicant has therefore failed to establish sufficient reason why he should be permitted to file a successive application for post-conviction relief. See Aice, 305 S.C. at 452, 409 S.E.2d at 395 ("[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.").

Statute of Limitations/Newly Discovered Evidence

The Court finds this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction

Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 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). 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 newly discovered 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 plea or his previous PCR action. Indeed, all of the arguments Applicant makes in his response are supported by documents and information which were or could have been known to Applicant at the time of his first PCR action. Applicant was convicted of the offenses he challenges in this Application on June 10, 1999, and January 26, 2000. This application was filed on October 29, 2013, well beyond the expiration of the statutory filing period.

Before the Court will hold an evidentiary hearing, 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 failed to make such a *prima facie* showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and above, the application for PCR is hereby denied and dismissed with prejudice.

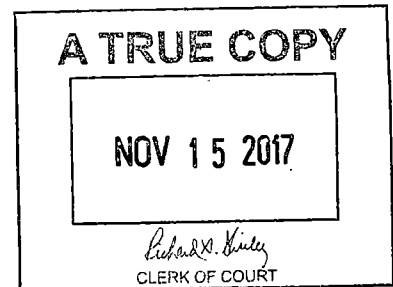
This Court hereby advises Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 14 day of November, 2017.



THE HONORABLE J. CORDELL MADDOX, JR.
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina.



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ANDERSON SC
2017 NOV 14 PM 4:44
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Corey Williams,)
 S.C.D.C. No. 259070,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE TENTH JUDICIAL CIRCUIT
 2013-CP-04-2353

CONDITIONAL ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
 ANDERSON SC
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 COMMON PLEAS AND
 GENERAL SESSIONS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Corey Williams (Applicant) on October 29, 2013. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. The Anderson County Grand Jury indicted Applicant at the April 1999 term of General Sessions for Armed Robbery (99-GS-04-807), Possession of a Firearm During the Commission of a Violent Crime (99-GS-04-806), and Conspiracy (99-GS-04-805) and Murder (99-GS-04-804). Applicant was represented by Nancy J. Thomason, Esquire, and after a trial by jury before the Honorable C. Victor Pyle on June 7-10, 1999, Applicant was found guilty of armed robbery, possession of a firearm, and conspiracy. The jury was unable to reach a verdict on the murder charge. A mistrial was subsequently declared on the murder charge after a juror indicated that she was unable to abide by her oath. Applicant was sentenced to thirty (30) years for armed robbery, five (5) years consecutive for conspiracy, and

five (5) years consecutive for possession of a firearm. Applicant did not appeal these sentences or convictions.

Applicant continued to be represented by Ms. Thomason, and on January 26, 2000, pled guilty before the Honorable L. Casey Manning to the murder charge and was sentenced to forty-five (45) years imprisonment (concurrent to his present sentences). Applicant again did not appeal.

2002-CP-04-1094

On April 8, 2002, Applicant filed an application for post-conviction relief, alleging the following grounds for relief:

Ineffective assistance of counsel

1. Procedural Due Process
2. Denial of Right to Appeal
3. Inconclusive records
4. No reasonable doubt charge given nor found

In an attached memorandum, Applicant asserted the following:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to the violation of the indictment not being properly filed and clock stamped.
 - b. Counsel failed to object to the court lack of subject matter jurisdiction due to not having complete recording of the proceedings.
 - c. Counsel failed to object to no curative instruction being given on the reasonable doubt charge.
 - d. Counsel did not file an appeal of those issues.
2. The courts lacked subject matter jurisdiction.
 - a. Indictment was not officially filed in Anderson County Clerk of Court and was not time-stamped.
3. Denial of appellate review right.
4. Procedural as well as substantive due process of law violation.
5. Inconclusive record of transcript.
6. No curative instruction on the reasonable doubt charge.

Respondent made its Return on January 7, 2004. Applicant was represented in the action by Rodney Richey, Esquire, and an evidentiary hearing was held before the Honorable Alexander S.

Macaulay on April 21, 2005. The court issued an order dated July 7, 2005, denying the petition, but concluding that Applicant was denied his right to appeal only from the June 1999 trial and granted a belated appeal. On July 25, 2005, Applicant filed a Rule 59(e) Motion. On August 3, 2005, Respondent made its Return. On August 19, 2005, the Court denied and dismissed Applicant's Motion, declining to alter or amend the judgment.

Applicant filed a timely appeal in which he was represented by Robert M. Pachak, Assistant Appellate Defender with the South Carolina Office of Appellate Defense. Applicant's counsel filed a Petition For Writ of Certiorari raising the following issue:

1. Whether there was any evidence to support the PCR judge's findings that the Petitioner was entitled to a belated appeal of his trial in June of 1999.

Applicant's counsel also filed an Anders Brief Pursuant to White v. State raising the following issue:

1. Whether the trial court's charge on accomplice liability constituted a mandatory presumption that shifted the burden of proof.

Applicant also filed a pro se brief.

On January 16, 2007, the Supreme Court of South Carolina granted the Petition for Writ of Certiorari to proceed with a review of the direct appeal issue pursuant to Davis v. State. After a review pursuant to Anders, the South Carolina Supreme Court then granted counsel's request to be relieved and dismissed the appeal. See Williams v. State, Memorandum Opinion No. 2007-MO-002 (S.C. Sup.Ct. filed Jan. 16, 2007). The Remittitur was issued on February 1, 2007.

Applicant then filed a pro se state habeas corpus petition in the original jurisdiction of the South Carolina Supreme Court on or about December 11, 2009. On January 21, 2010, the South Carolina Supreme Court denied the petition, concluding that Applicant had not shown that there had been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice, citing Butler v. State, 397 S.E.2d 87 (S.C.1990).

9:10-00829-JFA-BM

On March 29, 2010, Applicant filed a pro se petition to the United States District Court seeking federal habeas relief under 28, U.S.C. § 2254. Applicant raised the following issues:

1. Jurisdiction of Subject Matter.
2. Jurisdiction of Subject Matter (issue 2).
3. Prosecutorial Misconduct.
4. Ineffective Assistance of Counsel.
5. Miscarriage of Justice.
6. Double Jeopardy.
7. Violation of Due Process and 14th, 5th, 16th Amendment rights.
8. Coercion of guilty plea

Respondent made its Return requesting summary dismissal of Applicant's petition. On November 5, 2010, United States Magistrate Judge Bristow Marchant issued a Report and Recommendation, finding that Applicant had failed to timely file his federal petition and recommending that Respondent's motion for summary judgment be granted and Applicant's petition be dismissed with prejudice. On November 18, 2010, Applicant filed his objections to the Report and Recommendation. On March 2, 2011, the Honorable Joseph F. Anderson, Jr., of the United States District Court, filed an Order adopting the Report and Recommendation, overruling Applicant's objections thereto, and denying Applicant's certificate of appealability.

On March 24, 2011, Applicant filed a Notice of Appeal to the Fourth Circuit Court of Appeals, seeking to appeal the district court's order accepting the Report and Recommendation and dismissing as untimely his § 2254 petition. Case No. 11-6408. On April 19, 2011, Applicant filed his informal opening brief. On June 21, 2011, the Fourth Circuit Court of Appeals issued an unpublished per curiam opinion denying a certificate of appealability and dismissing Applicant's appeal. Williams v. South Carolina, 435 F. App'x 285 (4th Cir. 2011). Judgment was issued the same day. Applicant subsequently filed a Request for Extension of Time to file a Petition for

rehearing which was denied on July 12, 2011. On July 13, 2011, the court's judgment took effect by mandate.

2011-CP-04-2789

On September 20, 2011, Applicant filed an application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. "Jurisdiction of the Subject Matter for the 1999 convicted sentences on the lesser included offenses, for which a mistrial was declared in the case."
2. "Jurisdiction of Court to accept plea of guilty for the 1999 Murder indictment when indictment was superseded by indictment bearing the same language and information."
3. "Violation to Applicant's Fifth Amendment right for Double Jeopardy Clause on 1999 and 2000."

Respondent made its Return and Motion to Dismiss on or about February 27, 2012, requesting that the Application be summarily dismissed. The court issued a Condition Order of Dismissal dated March 5, 2012. In a document captioned "Motion to show why the application should not be dismissed pursuant to S.C. Code Ann. § 17-27-70(b)" filed March 27, 2012, the Applicant raises the following:

1. "The [trial] court made a "plain error" by accepting the guilty verdicts for the lesser included offenses before a verdict was reached for the felony charge."
2. "Applicant asserts his due process rights were violated under the Fifth and Fourteenth Amendments of the United States Constitution as well as Article I, Section 3 of the South Carolina Constitution when the State indicted him on four different charges that stemmed from a single criminal incident in one night, that should have been construed as one offense as the legislature intended because the charges occurred so closely in time that under the law they should not have constituted separate and distinct offenses as stated under S.C. Code Ann, §17-25-50."
3. "Applicant asserts that his guilty plea cannot be a valid plea because the state did not retain any jurisdiction on the charging document (1999-GS-04-808)."
4. "Applicant also asserts his due process rights to double jeopardy of the Fifth Amendment, made applicable to the states through the fourteenth amendment, have been violated in 1999 and 2000. The facts clearly show that Applicant was sentenced twice for the same crime."

On June 13, 2008, a Final Order of Dismissal was filed, signed by the Honorable J. Cordell Maddox, Jr., dismissing the application with prejudice stating that "Applicant has shown no reason for the thirteen-plus year delay between the affirmation of his appeal and his filing of this PCR application" and that "Applicant has shown no reason why these grounds could not have been raised or were not properly raised by him in his previous PCR application and PCR appeal."

On August 2, 2012, Applicant filed a Notice of Appeal. On August 14, 2012, an Order was issued from the South Carolina Supreme Court dismissing the appeal because Applicant failed to show there is an arguable basis for asserting that the determination by the lower court was improper. The Remittitur was issued August 30, 2013.

CURRENT APPLICATION

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

1. Miscarriage of Justice
2. Ineffective Assistance of Counsel
3. Nolle Prosequi entry
4. Abuse of discretion by trial court
5. Ineffective Assistance of PCR Counsel 17-27-100, 17-27-90
6. After Discovered Evidence Rule 29(b)

Before this Court are the records of the Anderson County Clerk of Court regarding Applicant's convictions, Applicant's prior PCR records and records on appeal, and the South Carolina Department of Corrections' records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. 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.

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).

Applicant's contention that he received ineffective assistance of PCR counsel 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).

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. This Court finds that Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason to warrant a successive PCR application.

This Court finds that the current allegations could have been raised in prior 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

The Court finds that this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 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 in this Application on June 10, 1999, and January 26, 2000. This Application was filed on October 29, 2013, well beyond the expiration of

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) (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, Applicant failed to file within the time mandated by the Post-Conviction Procedure Act and Applicant’s post-conviction relief application must be summarily dismissed.

Newly Discovered Evidence

This Court finds that Applicant’s claim of alleged “newly discovered evidence” is extremely 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 plea 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 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 allegation must be summarily dismissed with prejudice.


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 Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Justin J. Hunter, Esquire
PCR Division – 10th Circuit
P.O. Box 11549
Columbia, SC 29211

FILED-CLERK'S OFFICE
ANDERSON SC
2015 MAR 16 A 10:08
COMMON PLEAS AND
GENERAL SESSIONS

AND IT IS SO ORDERED this 12 day of March, 2015.



J. CORBELL MADDOX, JR.
Chief Judge for Administrative Purposes
Tenth Judicial Circuit

Anderson South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 9, 2015

FILED-CLERK'S OFFICE
MILPSON SC.
2015 MAR 16 A 10:08
COMMON PLEAS AND
GENERAL SESSIONS

The Honorable J. Cordell Maddox, Jr.
Chief Administrative Judge, Tenth Circuit
Post Office Box 8002
Anderson, South Carolina 29622

Re: Corey Williams, #259070 v. State of South Carolina
2013-CP-04-2353

Dear Judge Maddox:

Enclosed please find the original proposed **Conditional Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign it. You may then file the order with the Clerk and have him serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

for Justin J. Hunter
Staff Attorney

JJH/cc
Enclosures

cc: Corey Williams, #259070

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
)
COREY WILLIAMS, #259070)
) Plaintiff,)
)
) vs.)
)
)
STATE OF SOUTH CAROLINA)
) Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-04-2353

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED-CLERK'S OFFICE
 ANDERSON SC
 1 09 15 MAR 16 A 10: 08
 COMMON PLEAS AND
 GENERAL SESSIONS

Plaintiff's Attorney: Corey Williams, #259070 , Bar No. _____ Address: Tyger River Correctional Institution Enoree, SC 29355 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

E. H. Neyle for Justin J. Hunter
 Signature of Attorney for Plaintiff / Defendant

February 9, 2015
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
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CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

Corey L. Williams #259070

Tyger River Corr. Inst.

200 Prison Road U-11, Rm 223
Enoree, SC 29335



South Carolina Supreme Court

Post Office Box 11330

Columbia, SC 29211

*Legal
Mail*

RECEIVED

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