

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Harold Watts, #127180

2016-CP-23-5239

Applicant,

CONDITIONAL ORDER OF DISMISSAL

v.

State of South Carolina,

ENTERED COMPUTER

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKES-SIMMER
2017 FEB 3 PM 3 26

This matter comes before the Court by way of an application captioned "Austin/Odom Petition¹" for post-conviction relief (PCR) filed on September 12, 2016. The Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted Applicant at the September 2012 term of General Sessions for attempted murder (2012-GS-23-5528, count 1) and first-degree burglary (2012-GS-23-5528, count 2). James W. Bannister, Esquire represented Applicant.

On April 8, 2013, Applicant pled guilty. The Honorable Letitia H. Verdin sentenced Applicant to concurrent terms of thirty years for attempted murder and thirty-five years for first-degree burglary. Applicant filed a pro se notice of appeal at the South Carolina Court of Appeals. By order dated July 1, 2013, the Court of Appeals dismissed the matter due to the Applicant's failure to timely serve and file the notice of appeal. The Remittitur was sent on

¹ This Court construes application as a successive application for post-conviction relief, claiming PCR counsel failed to appeal the denial of his prior PCR application.

August 16, 2013.

2014-CP-23-1117

Applicant filed his first application for post-conviction relief (PCR) on February 28, 2014 (2014-CP-23-1117). Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. “[F]ailed to file notice of appeal as I requested. Counsel should have raised the concerns with the indictment. The court accepting a conditioned plea.”
 - b. “[F]ailed to investigate the Burglary Charge. Had he investigated he would have found that this was my leagal [sic] residence and the victim my common law wife.”
 - c. “[F]ailed to seek a charge of a lesser offense than Burglary. When the facts prove that this was not Burglary. Counsel even stated on the record that defendand denies entering the residence.”
 - d. “[F]ailed to object to the court having jurisdiction to accept a plea to a defective indictment.”
 - e. Failed to provide the Applicant with all discovery material.
 - f. Failed to request a competency evaluation.
 - g. Failed “to protect my constitutional right to have a bond hearing.”
 - h. Failed to investigate the indictment.
 - i. Failed to request a change of venue.
 - j. “[F]ailed to have a crime scene investigation done. Had he had an investigation done he would have found that the facts as presented by the State did not line up with the crime area.”
2. Lack of subject matter jurisdiction.
3. Defective Indictment.
4. Prosecutorial misconduct.

Respondent made its return on August 22, 2014. On December 16, 2014 an evidentiary hearing was convened at the Greenville County Courthouse. Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent. The Honorable Eugene C. Griffith, Jr. denied and dismissed the application for post-conviction relief by order dated and signed on February 10, 2015 and filed on March 16, 2015.

A notice of appeal was filed on April 16, 2015 on behalf of Applicant (App. Ca.

No. 2015-000812). Lara M. Caudy, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal by way of a Johnson² Petition for Writ of Certiorari to the Supreme Court of South Carolina. Applicant also filed a pro se Petition for Writ of Certiorari on or around November 18, 2015. By vote of the Court, the Petition(s) were denied by order dated July 18, 2016. The Remittitur was issued August 1, 2016.

In his current PCR application³, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel."
 - a. Counsel failed to file notice of appeal.
2. "Ineffective assistance of PCR counsel."
 - a. Counsel failed to "file a 59(e) motion to preserve all the issues that was not addressed in the PCR Court's order."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 pled guilty to the offense he challenges in this application on April 8, 2013. Remittitur

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

³ The Court notes that Applicant currently has a pending Petition for Federal Habeas Corpus, also.

from the direct appeal was issued August 16, 2013. This application was filed on September 12, 2016, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may

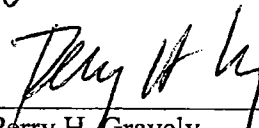
not raise those grounds in successive applications. Id. Applicant bears the burden of showing that the allegations could not have been raised previously. Id. Applicant's Austin⁴ claim is without merit, as Applicant's prior PCR received appellate review by the Supreme Court of South Carolina (App. Ca. No. 2015-000812). As Applicant has failed to present any reasons why he could not have raised the current allegations in his previous PCR application, the application is dismissed.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by serving a copy on opposing counsel at the following address:

Office of the Attorney General
Attn: Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 30th day of June, 2017, 2016.



Perry H. Gravely
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

⁴ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2016CP2305239

FILED - CLERK OF COURT
GREENVILLE OF S.C.
PAUL B. WICKENSIMER
2017 FEB 3 PM 3:08

Harold Watts vs. South Carolina State Of

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.
- ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Rule 12(b), SCRCP; Rule 41(a), SCRCP; Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRCP; 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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Harold Watts Broad River Correctional Institute
4460 Broad River Rd Columbia, SC 29210

Patrick Schmeckpeper

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court