

RECEIVED

JAN 29 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

APPEAL FROM SPARTANBURG COUNTY

COURT OF COMMON PLEAS

J. MARK HAYES, Circuit Court Judge

CASE NO. 2017-CP-42-2587

State of South Carolina

Respondent.

V.

Travis Sentell Rice #304580

Appellant.

NOTICE OF APPEAL

Travis Sentell Rice appeals the order of the Honorable J. Mark Hayes dated January 20, 2018. Appellant received written notice of entry of his order January 16, 2018

January 22, 2018

Travis Rice

Travis Sentell Rice
LIVESAY B. CORR. INST. 6-178
P.O. BOX 580
UNION, S.C. 29378

RECEIVED

JAN 29 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

J. MARK HAYES, CIRCUIT COURT Judge

CASE NO. 2017-CP-HZ-2587

STATE OF SOUTH CAROLINA

Respondent,

v.

Travis Sentell Rice #304540

Appellant,

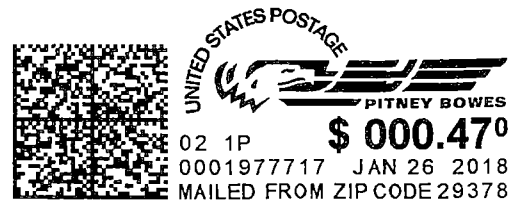
CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal on Valerie Garcia Giovanoli by depositing a copy of it in the United States Mail, postage prepaid, on January 22, 2018, addressed to Valerie Garcia Giovanoli, S.C. Attorney General's Office, P.O. Box 11549, Post Conviction Relief Section, Columbia, S.C. 29211-1549

Travis Sentell Rice
Travis Sentell Rice #304588
Livesay B. Corr. Inst 6-163
P.O. Box 580
UNA S.C. 29378

RAVIS KICE TO 0-100-
IVLSAY B. Corr. Inst 6-16-0A
P.O. Box 580
Columbia, S.C. 29378

SC 266
26 JAN 18
PM 3 11



The Supreme Court of South Carolina
DANIEL E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

29211-133030



"THE DEPARTMENT OF CORRECTIONS HAS NOT
CENSORED NOR INSPECTED THIS ITEM.
THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN
CONTENTS."

WARDEN, LIVESAY CORRECTIONAL INSTITUTION
SC DEPARTMENT OF CORRECTIONS

SCDC

FEB 09 2018

Mailroom
SCDC

JAN 26 2018

MAIL ROOM

304580

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Travis Sentell Rice, #304580,

2017-CP-42-2587

Applicant,

v.

State of South Carolina,

Respondent.

FINAL
ORDER OF DISMISSAL

2018 JAN 16 PM 2:15
H. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed on July 28, 2017. Respondent made its Return, requesting the application be summarily dismissed because it was filed after the statute of limitations had expired, is successive to Applicant's prior PCR applications and is barred by the doctrine of *res judicata*.

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 November 30, 2017, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 a Certificate of Service from the Spartanburg County Clerk of Court dated, November 30, 2017, serving the above-mentioned Conditional Order of Dismissal on Applicant. Also attached to this Final Order and incorporated herein by reference is Applicant's response to the State's motion to dismiss and the Conditional Order of Dismissal.

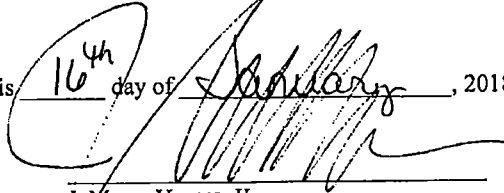
Applicant filed two documents, one captioned "Objection to Return and Motion to Dismiss" and another captioned, "Response to Conditional Order of Dismissal" on December 11, 2017, in which Applicant again alleges ineffective assistance of counsel Counsel's failure to file

a "frank v. Delaware hearing to challenge the warrant/affidavit." Applicant asserts the "warrant/affidavit" in his case did not support probable cause. He also moves for summary judgment and simply states, "the Applicant has by pass the statute of limitations."

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and 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 PCR application is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 16th day of January, 2018.



J. MARK HAYES, II
Circuit Court Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

FILED
JAN 16 2018
M. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

January 16, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Travis Seibel Rice
Applicant # *304580*

CASE # *2017CP42-2587*

VS
State
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Final Ord. Dismissed*
In this action dated *1-16* *2018* on *1-16-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Ciocan
Widdup Inc
Travis Rice

1-16-18
(Date)

Corrie Skay
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Travis Sentell Rice, #304580,
Applicant,

2017-CP-42-2587

v.

State of South Carolina,
Respondent.

CONDITIONAL
ORDER OF DISMISSAL

2017 NOV 30 PM 1:14
M. HOFFER-BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed July 28, 2017.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2010, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute (PWID) crack cocaine within proximity of a school (2010-GS-42-3698), PWID methamphetamine or cocaine base, third offense (2010-GS-42-3700) and PWID marijuana (2010-GS-42-3701)¹. Scott D. Robinson, Esquire, represented Applicant. On July 29, 2010, Applicant pleaded guilty as indicted to all charges before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentenced Applicant to imprisonment for concurrent terms of fifteen years each for PWID methamphetamine or cocaine base, third or subsequent offense and PWID marijuana, third or subsequent offense. Judge Cole sentenced

¹ Applicant only challenges indictment numbers 2010-GS-42-3700 and 2010-GS-42-3701.

Applicant to ten years for PWID crack cocaine within proximity of a school.² Applicant did not appeal his convictions or sentences.

First PCR Application: 2011-CP-42-2871

Applicant subsequently filed an application for post-conviction relief (PCR) on July 5,

2011. Applicant raised the following issues in his first PCR:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel failed to investigate the case and any potential defenses,
 - b. Counsel failed to challenge the search warrant,
 - c. Counsel failed to file a Motion for a suppression hearing,
 - d. Counsel failed to interview witnesses,
 - e. Counsel failed to object to the enhanced sentence,
 - f. Counsel failed to move to suppress Applicant's self-incriminating statements,
 - g. Counsel failed to challenge chain of custody of the drugs,
 - h. Counsel failed to challenge the of previous charges to enhance the sentence of the current conviction,
2. Involuntary Guilty Plea
3. Prosecutorial Misconduct

2017 NOV 30 PM 1:14
M. HOPE ACLEY

Respondent filed its Return on or about May 16, 2012. An evidentiary hearing was convened at the Spartanburg County Courthouse on November 8, 2012. Applicant was present and represented by Shawn M. Campbell, Esquire. Suzanne H. White of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's former plea counsel, Mr. Robinson, also testified. On December 21, 2012, the Honorable J. Mark Hayes II, issued an Order of Dismissal dismissing the case with prejudice. The court found that Applicant's counsel was not ineffective and that the transcript reflected that the pleas were knowingly and voluntarily entered into with a full understanding of the charges and consequences of the plea. The court also dismissed Applicant's allegations of prosecutorial misconduct because he failed to offer any testimony or evidence to support this claim.

² As a result of the negotiated plea, an additional charge of possession with intent to distribute marijuana within the proximity of a school was dismissed.

On May 3, 2013, Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. On February 23, 2015, the South Carolina Court of Appeals denied Applicant's petition and granted counsel's request to withdraw. On May 27, 2015, the Remittitur was returned to the lower court.

Second PCR Application: 2013-CP-42-4717

Applicant subsequently filed a second application for post-conviction relief (PCR) on December 4, 2013. Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. "This matter comes by way of newly discovered evidence which is material evidence which has never been presented before the Court, and this newly discovered evidence which has never been presented before the Court, and this newly discovered evidence is so genuine material facts that will prove that the Applicant just discovered this evidence."
 - a. "Applicant was informed by his Attorney, as well as the Department of Probation, Parole & Pardon Services that he was eligible for parole. While in prison, Applicant was initially treated as if he was Parole Eligible, and attended a Parole Review...A few months later, after further inquiries to the S.C. Department of Corrections Staff, Department of Probation, Parole & Pardon Services informed Applicant that he was not eligible for parole."

Respondent filed its Return and Motion to Dismiss on July 1, 2014. On July 25, 2014, the Honorable J. Derham Cole signed a Conditional Order of Dismissal, and filed July 28, 2014, based upon expiration of the statute of limitations, the presumption against successive PCR applications, failure to state a claim upon which relief can be granted regarding length of sentence, and failure to state a prima facie claim of newly discovered evidence. The court granted Applicant twenty days from the date of service to show why the order should not become final. On December 30, 2016, the Honorable Roger L. Couch issued a Final Order of Dismissal, dismissing the application, with prejudice.



II. CURRENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
2. "In Violation of the 4th Amendment of the United States"³

Before this Court are the records of the Spartanburg 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also 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, et. seq. 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 pleaded guilty to the offenses he challenges in this Application on July 29, 2010. Applicant did not appeal his conviction or sentence, so he was therefore required to file his

³ Applicant states "See Attachment" on his application, but there is no attachment to the application. The Spartanburg Clerk of Court also confirmed that there was no attachment sent with the application.

2017 NOV 20 PM 1:24
M. HOPKINS
CLERK OF COURT
SPARTANBURG, SC

application on or before July 29, 2011. This application was filed on July 28, 2017, which was 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.

Successiveness

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

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).



2017 NOV 30 PM 1:11
M. J. HOPKINS
CLERK OF COURT
SOUTH CAROLINA

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).

[Conclusion and Signature block to follow on next page]

2017 NOV 30 PM 1:14
M. HOPE BLACKLEY



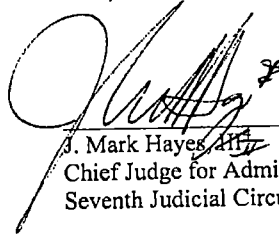
IV. CONCLUSION

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. 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 shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Valerie Garcia Giovanoli, Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

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


J. Mark Hayes, ~~Att~~
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

2017 NOV 30 PM 4:18
M. HOPE BLACKLEY
CLERK OF COURT

Spartanburg, South Carolina

⁴ The chief administrative judge for the Court of Common Pleas, Honorable J. Derham Cole, was Applicant's sentencing judge.

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

November 30, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Travis Seftel Rice
Applicant # 304580

CASE # *2017CP12-2587*

vs
Steele
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Decision and Order Dismissal*
in this action dated *11-30*, *17* on *11-30-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Giustanoli
Kinday McCoy
Travis Rice

11-30-17
(Date)

Cherie Seay
(Signature)