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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Michael Cline, #156213,)	Case No. 2014-CP-26-7019
)	
Applicant,)	
)	
v.)	CONDITIONAL ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	

Horry County
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 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed October 20, 2014 by Michael Cline. Respondent made a Return and Motion to Dismiss requesting that the application be summarily dismissed as successive and barred by the statute of limitations. Incorporated herein by reference are the Horry County Clerk of Court records regarding the conviction and the Applicant’s prior post-conviction relief files.

PROCEDURAL HISTORY

Underlying Conviction

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of court. The Applicant was indicted on April 17, 2003 for burglary in the first degree (2003-GS-26-1055). He was represented by Ryan A. Stampfle, Esquire and William Frederick O’Neil, III, Esquire. In August of 2003, the Applicant proceeded to trial before the Honorable Roger M. Young, and the jury found him guilty. On August 12, 2003, he was sentenced to twenty (20) years. The South Carolina Court of Appeals affirmed the conviction on June 1, 2004 (2004-MO-025). The case was remitted to the circuit court on or about June 17, 2004.

2004-CP-26-4330

Applicant filed his first post-conviction relief action for this conviction on August 5, 2004. In that application, Applicant raised the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Lack of subject matter jurisdiction.

An evidentiary hearing was convened before the Honorable Paula H. Thomas on May 22, 2006, at which the Applicant was present and represented by J. Wesley Locklair, III, Esquire. Following the hearing, Judge Thomas issued an Order of Dismissal dated August 17, 2006. A Johnson¹ appeal was perfected on the Applicant's behalf, and a Petition for Writ of Certiorari was submitted by Wanda H. Carter, Esquire. Mr. Cline also submitted a *pro se* petition for Writ of Certiorari. However, the S.C. Supreme Court denied certiorari on December 5, 2007, and the matter was remitted to the circuit court on December 21, 2007.

2008-CP-26-1677

Applicant filed his second post-conviction relief action on February 28, 2008. In that application, Applicant raised the following grounds for relief:

1. Due process was violated because of procedural defects regarding failure to properly file the indictment with the Clerk of Court.
2. The charge was elevated to burglary in the first degree without probable cause.

The State received the application on October 30, 2008, and submitted the Return and Motion to Dismiss on November 25, 2008. In November 28, the Applicant requested that the matter be dismissed. A Conditional Order of Dismissal was issued by the Honorable J. Michael Baxley on December 2, 2008, and a Final Order of Dismissal was issued by Judge Baxley in January of 2009. No appeal was filed.

¹ Johnson v. State, 284 S.C. 310, 364 S.E.2d 201 (1988).

2009-CP-26-10778

On November 6, 2009, the Applicant filed a third PCR application. In this application, he raised the following issues:

1. Crime committed was non-violent.
2. Prior burglary charges were not violent and were 14 year old crimes.
3. Violation of constitutional rights including double jeopardy, 6th amendment, and 14th amendment.

The State made a Return and Motion to Dismiss on December 5, 2009. A Conditional Order of Dismissal was served on January 8, 2010. The Applicant made a response, but a Final Order of Dismissal was served on March 9, 2010. The Applicant filed a Notice of Appeal to the South Carolina Supreme Court. The Court dismissed the appeal on September 21, 2010, pursuant to Rule 243(c), SCACR, and the matter was remitted to the circuit court on October 7, 2010.

2010-CP-26-10752

On November 15, 2010, Applicant filed a fourth PCR application. In this application, he raised the following issues:

1. Failure of court to rule on all issues.
2. Lack of subject matter jurisdiction
3. Unconstitutional enhancement in violation of § 17-25-50 and § 17-25-45(F)

The State made a Return and Motion to Dismiss on December 14, 2010. A Conditional Order of Dismissal was served on April 5, 2011. Applicant objected to the Conditional Order of Dismissal on April 14, 2011; however, the Honorable Steven H. John issued a Final Order of Dismissal in July 2012, and it was served on the Applicant on August 20, 2012. No appeal was filed.

Current Application

In this, Applicant's fourth and current application for post-conviction relief, he filed an identical application (2014-CP-26-7019), which this Court merged into the present application. Applicant alleges that he is being held in custody unlawfully because he has new evidence that

his lawyer failed to show that a burglary charge was vacated in 1996, and raised the following issues:

1. Newly discovered evidence.
2. Ineffective assistance of counsel.

Applicant is requesting that his first degree burglary conviction be considered a second degree burglary conviction because his sentences were running concurrent with a sentence that was vacated. (*see* Case No.: 1996-CP-26-139 (vacating indictment 89-GS-26-339)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.” See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that the application must be summarily dismissed for two reasons. First, the allegation must be summarily dismissed because it is impermissibly successive. The Uniform Post Conviction Procedure Act provides that:

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.

S.C. Code Ann. § 17-27-90 (2003). Under this statute, successive post-conviction relief applications are forbidden unless an applicant, who bears the burden of proof, 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, 409 S.E.2d 398 (1991). This applicant could have raised these allegations in his previous applications for PCR; therefore, he cannot raise them now in a successive application. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra. Therefore, this application must be dismissed as impermissibly successive.

Further, this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. 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, 470, 469 S.E.2d 606, 607 (1996).

The Applicant was convicted on August 12, 2003, and his direct appeal concluded in June of 2004. This application was not filed until October 20, 2014; accordingly, it must be dismissed as barred by the statute of limitations.

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 Court finds that the application for post-conviction relief must be summarily dismissed for the reasons discussed above.

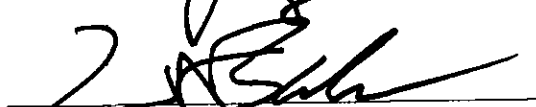
CONCLUSION

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 ruling should not become final. Applicant shall file any reasons he may have with the Horry County Clerk of Court (P.O. Box 677, Conway, SC 29528) and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Jessica E. Kinard, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within thirty (30) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 15 DAY OF July, 2015.


THE HONORABLE WILLIAM H. SEALS, JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

, South Carolina

7/15, 2015