

degree. Also, Applicant pled guilty as indicted to unlawful neglect. The Honorable J. Mark Hayes, II, accepted Applicant's plea, and in accordance with the recommendation of the State sentenced Applicant to confinement for a period of fifteen (15) years. Applicant was to receive 295 days credit for time served. Applicant was sentenced to ten (10) years' confinement for unlawful neglect. At the time, Applicant was also on probation for financial transaction fraud (2010-GS-42-0157). Judge Hayes, found Applicant in violation of the conditions of his probation and reinstated a two (2) year sentence for the probation violation. Applicant was also required to register with the sexual offender registry and to have no contact with the victim. The sentences were to run concurrent with each other.

Subsequently, Applicant filed a motion to reconsider his sentence. On March 7, 2013, following a hearing on the motion, the motion to reconsider was granted. Applicant's sentence was altered to reflect that Applicant's original fifteen (15) year sentence for criminal sexual conduct, first degree and the ten (10) year sentence on child neglect were to remain, but both were suspended upon service of seven and one half (7½) years followed by five (5) years of supervised probation. Applicant did not appeal his convictions or sentences.

2013-CP-42-2653

Applicant filed his first post-conviction relief application on June 25, 2013. He alleged the following grounds for relief:

1. Ineffective assistance of counsel, in that;
 - a. Counsel (James Cheek & Richard Whelchel) only met with Applicant two times prior to guilty plea,
 - b. Counsel failed to review discovery materials with the Applicant,
 - c. Counsel failed to discuss possible defenses or challenges to Applicant's statement,
 - d. Counsel failed to present accurate and complete information during mitigation portion of sentencing,

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- e. Counsel failed to notify Applicant's family of plea or allow him time to discuss plea offer,
 - f. Counsel brought in the Assistant Solicitor to meet with Applicant the morning of the plea against Applicant's will.
2. Civil rights violation, in that;
- a. Interview with Detective Bohon was improper.

Respondent made its Return and on January 12, 2016, an evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Alicia A. Olive of the South Carolina Attorney General's Office. Applicant informed the Court of his desire to withdraw his application. After finding that Applicant's decision to withdraw his application was knowingly, voluntarily, and intelligently made, Judge Cothran by written order dated March 2, 2016, dismissed the application with prejudice.

CURRENT APPLICATION

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

- 1. Ineffective Assistance of Counsel in that;
 - a. Counsel failed to object to the prosecutions failure to present aggravating factors such as; the rape kit and medical examinations.
 - b. Counsel "failed to honor defendant's communication in correcting his own statements of nerve and heart problems."
 - c. Counsel failed to question potential witnesses Christie Brall.
 - d. Counsel failed to have Applicant sign his plea agreement and indictment in compliance with S.C. Code § 17-23-130.
 - e. Counsel failed to inform Applicant on the record of his constitutional right to appeal his convictions and sentences.
 - f. Applicant did not knowingly, willingly, or voluntarily waive his constitutional right to appeal his convictions and sentences.
 - g. Counsel failed to file notice of appeal.
 - h. "But for counsel's errors the outcome of the case would have been different on appeal.

- 2. After-discovered Evidence;

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- a. "The medical examinations reports were sequestered by the prosecuting attorney, Ms. Hilliary C. Welburn. Only through contact with the 7th Judicial Circuit Solicitor's Office was I able to compel the release of these documents... Finally, after ethical order of Mr. Richard H. Whelchel through Mr. Clay T. Allen did I receive them on October 1, 2015. I filed a Motion for New Trial based on Newly Discovered Evidence... Judge R. Keith Kelly denied the motion on May 13, 2016... There is substantive documentation to back it up positive."
3. State and Federal Constitutional violations.
 - a. "Waiver of Presentment of Indictment"
 - b. "Self-Incrimination" – Applicant "was refused the opportunity to put his statement in his own handwriting" and was interrogated under duress after having suffered several seizures.
 - c. "Double Jeopardy" – "General Sessions remanded the case back to family court. It was heard and ruled upon [on] May 24, 2012 before the Honorable William Wyle, Jr. with Kenneth E. Lee representing [Applicant]. The ruling was in favor of [Applicant]."
 - d. "Cruel and unusual punishment."

Before this court are the: Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's prior PCR records , and the records for this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds the application must 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. (2003). 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 on 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).

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Applicant was sentenced on October 4, 2012. The sentence was altered on March 7, 2013. This application was filed on October 3, 2016, well beyond the statutory filing period expiration date.

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, Applicant’s current application must be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successive

The Court also finds that the Application must be summarily dismissed because it is successive to Applicant’s previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code 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 indicate 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 392 (1991).

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Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.” Id. at 450. 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 the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any 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.

Thus, the Court shall summarily dismiss the application as successive to Applicant’s previous PCR application.

Newly discovered evidence

Applicant’s assertion that he is being held in custody unlawfully as a result of “after discovered evidence”, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

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In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

“(1) the newly discovered evidence was discovered after the entry of the plea and in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

In support of his claim of “after” or newly discovered evidence, Applicant alleges that medical examinations reports were sequestered by prosecution and he did not receive them until October 1, 2015. Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. The medical examination records were or could have been discovered before the entry of Applicant’s plea. Respondent submits that Applicant cannot meet either of the elemental requirements of the Jamison test to show that he is entitled to a new trial based on newly discovered evidence. 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 a *prima facie* showing. Therefore, this matter shall be summarily dismissed with prejudice.

{Conclusion and signature on the following page}

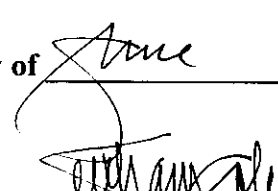
CONCLUSION

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

Office of the Attorney General
Attn: Valerie Giovanoli, Esquire
Rasheeda Cleveland, Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 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 that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 2nd day of June, 2017.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

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_____, South Carolina

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M. Hope Blackley
Clerk of Court

June 2, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Wm. Leon Burnett
Applicant # 352645

7TH JUDICIAL CIRCUIT

CASE # 2016CP42-3626

State^{VS}
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Conditional Order Dismissal
In this action dated 6-2-2017 on 6-2-17

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:

Abby Heenan
Alexis Oliva
Wm. Burnett

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6-2-17
(Date)

Carrie Self
(Signature)