

NOTICE OF APPEAL

MARCH 21, 2018

OTHER COUNSEL OF RECORD.

RASHEEDA CLEVELAND, ASSISTANT ATTORNEY GENERAL ETC.:
OFFICE OF THE ATTORNEY GENERAL, STATE OF SOUTH CAROLINA
P. C. R. DIVISION-9TH CIRCUIT
COLUMBIA, SOUTH CAROLINA 29210

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

CASE NO.: 2015-CP-10-5178

AITON M. CHISOLM APPELLANT.

STATE OF SOUTH CAROLINA RESPONDENT.

RECEIVED

MAR 26 2018

SC Court of Appeals

NOTICE OF APPEAL

AITON M. CHISOLM APPEALS THE DENIAL OF HIS POST CONVICTION RELIEF P.C.R. APPLICATION IN THIS CASE. THE APPLICATION FOR RELIEF WAS DENIED, FOLLOWING AN EVIDENTIARY HEARING BEFORE THE HONORABLE KRISTI LEA HARRINGTON ON FEBRUARY 23, 2018. A FORM (H) WAS SIGNED BY HONORABLE KRISTI LEA HARRINGTON DENYING THE APPELLANT'S P.C.R. APPLICATION ON FEBRUARY 23, 2018 AND SUBSEQUENTLY FILED WITH THE CLERK OF COURT ON FEBRUARY 27, 2018.

ASSISTANT ATTORNEY GENERAL RASHEEDA CLEVELAND NOTIFIED APPELLANT'S COUNSEL THAT A FORMAL WRITTEN ORDER WAS SUBMITTED AND DISMISSED.

ON MARCH 6, 2018 APPELLANT COUNSEL WAS MADE AWARE OF WRITTEN ORDER SERVED FINAL ORDER.

MARCH 21, 2018

Alton M Chisolm

AITON M. CHISOLM-6645
CORRECT CARE

1700 ST. ANDREWS, TERRACE Bldg. A
COLUMBIA, SOUTH CAROLINA 29210

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

CASE NO.: 2015-CP-10-5178

RECEIVED

MAR 26 2018

SC Court of Appeals

ALTON M. CHISOLM APPELLANT.

V.

STATE OF SOUTH CAROLINA RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL ON THE
STATE BY MAILING A COPY OF IT TO THE ADDRESS OF RECORD,
RASHEEDA CLEVELAND, ESQUIRE, P.O. BOX 11549 COLUMBIA, S.C. 29211 ON MARCH 21, 2018.

MARCH 21, 2018

Alton M. Chisolm
ALTON M. CHISOLM-6645
CORRECT CARE
1700 ST. ANDREWS, TERRACE Bldg. A
COLUMBIA, SOUTH CAROLINA 29210

OTHER COUNSEL OF RECORD:
RASHEEDA CLEVELAND, ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL, STATE OF SOUTH CAROLINA
P. C. R. DIVISION-9TH CIRCUIT
P. O. BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ALTON M. CHISOLM
APPLICANT.

IN THE SUPREME COURT OF SOUTH CAROLINA

CASE NO.: 2015-CP-10-5178

-VERSUS-

STATE OF SOUTH CAROLINA
RESPONDENT

REQUEST FOR REPRESENTATION ON APPEAL

RECEIVED

MAR 26 2018

SC Court of Appeals

ON BEHALF OF THE REQUEST OF THE ABOVE-NAMED APPLICANT, TO BE REPRESENTED BY THE SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, APPELLATE DIVISION (SCCID), THE UNDERSIGNED ATTORNEY WOULD SHOW UNTO THIS HONORABLE COURT THAT:

1. HE IS THE ATTORNEY FOR THE APPLICANT IN THE ABOVE CAPTIONED CASE, THE APPLICANT-APPELLANT WAS IN CUSTODY DURING AND TAKEN (INTO) CUSTODY IMMEDIATELY FOLLOWING THE POST CONVICTION RELIEF PCR HEARING AND WAS NOT AVAILABLE TO PERSONALLY SIGN THE REQUEST;

2. THE APPLICANT-APPELLANT WAS REPRESENTED BY THE UNDERSIGNED ATTORNEY AS AN INDIGENT, PURSUANT TO A CONTRACT WITH THE SCCID;

3. THE APPLICANT-APPELLATE HAS BEEN INFORMED THAT HE MAY REQUEST ASSISTANCE FROM THE SCCID APPELLATE DIVISION IN PERFECTING HIS APPEAL;

4. A TIMELY NOTICE OF INTENT TO APPEAL HAS BEEN FILED ON THE APPLICANT

5. THE APPLICANT-APPELLATE HAS BEEN INFORMED THAT NOTHING REQUIRES SCCID APPELLATE DIVISION TO PURSUE THIS APPEAL UNLESS THAT OFFICE CHIEF ATTORNEY IS SATISFIED THAT THERE IS ARGUABLE MERIT TO THIS APPEAL AND THAT HE CANNOT AFFORD TO HIRE AN ATTORNEY.

AT THIS TIME, THE APPLICANT-APPELLATE REQUESTS THE AID OF THE SCCID APPELLATE DIVISION IN PERFECTING HIS APPEAL TO THE SOUTH CAROLINA COURT OF APPEALS.

CHARLESTON, SOUTH CAROLINA

MARCH 21, 2018

RESPECTFULLY SUBMITTED

Alton M. Chisolm

ALTON M. CHISOLM

Walter M. Christensen - 6645
Correct Care



1700 St. Andrews Terrace Bldg. A
Columbia, South Carolina 29210

South Carolina Court of Appeals
Clerk: Jenny Abbott Kitchens
P. O. Box 11629
Columbia, South Carolina 29211

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IN THE
UNITED STATES

days for the failure to change address charge. The charges were to run concurrently and Applicant was to be given credit for time served. Applicant filed a *pro se* notice of appeal.

On August 19, 2004, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to show that the notice of appeal had been served within the ten-day requirement of Rule 203(b)(1), SCACR. On December 30, 2004, the Court of Appeals dismissed Applicant's subsequent petition for rehearing and issued the Remittitur on January 18, 2005. The Applicant then filed a motion to recall the remittitur which the Court of Appeals denied on February 15, 2005.

2005-CP-10-267

Subsequently, Applicant filed his first post-conviction relief application on January 21, 2005 alleging that he was being held in custody unlawfully as a result of; ineffective assistance of counsel, lack of subject-matter jurisdiction, and due process violations. Respondent made its return on July 27, 2006. On November 14, 2007, an evidentiary hearing into the matter was convened at the Berkeley County Courthouse before the Honorable J. Cordell Maddox Jr. Applicant was present and represented by David L. Michel, Esquire. Salley W. Elliott represented Respondent. On January 11, 2008, Judge Maddox denied and dismissed the application with prejudice.

CURRENT APPLICATION

In his *second* and current *pro se* application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Actual-innocence - jurisdictional defects.

Also, before the Court are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's prior PCR and appellate records, and Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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:

Statute of Limitations

The Court finds that the application is summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense 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.

S.C. Code Ann. § 17-27-45(A).

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 offense he currently challenges on August 29, 2003. The Remittitur from Applicant's unsuccessful appeal was issued on January 18, 2005. Applicant was therefore required to file any application for post-conviction relief on or before January 18, 2006. However, Applicant did not file this Application until October 22, 2015, 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. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(1994). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). 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, this application is dismissed for failure to file within the time mandated by the Act.

Successive

The Court also finds that this application 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). 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, 409 S.E.2d at 394. 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 application 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. Accordingly, this Court finds Applicant has failed to meet the burden imposed upon him, and this current PCR application is summarily dismissed as successive to Applicant's previous PCR application.

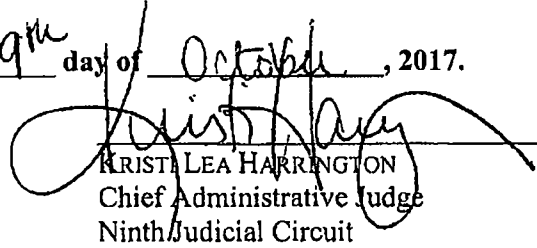
CONCLUSION

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

Office of the Attorney General
Attn: Rasheeda Cleveland, Esquire
PCR Division – 9th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Charleston County Clerk of Court and opposing counsel within twenty (20) days, and that 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 19th day of October, 2017.


KRISTI LEA HARRINGTON
Chief Administrative Judge
Ninth Judicial Circuit

Ymond's Corner, South Carolina



ALAN WILSON
ATTORNEY GENERAL

October 6, 2017

The Honorable Kristi Lea Harrington
300B California Ave.
Moncks Corner, SC 29461

Re: Alton Chisolm v. State of South Carolina
2015-CP-10-5178

Dear Judge Harrington:

Enclosed please find an original proposed **Conditional Order of Dismissal** in the above-captioned case. The Honorable Deadra Jefferson, Chief Administrative Judge for the Ninth Circuit, Charleston County, has a conflict of interest in this matter and has advised our office to refer all matters pertaining to the above referenced case to your office. Therefore, if this Order meets your approval, please sign and forward to the Clerk's office and have her serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Rasheeda Cleveland
Staff Attorney

RC/jaj
Enclosures

cc: Alton Chisolm



ALAN WILSON
ATTORNEY GENERAL

October 6, 2017

The Honorable Julie J. Armstrong
Charleston Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401-2210

Re: Alton Chisolm v. State of South Carolina
2015-CP-10-5178

Dear Ms. Armstrong: ⁵⁷⁷⁸

Enclosed please find the original **Return and Motion to Dismiss** of the Respondent, with its accompanying attachments, in the above-captioned case, for filing in your office.

Sincerely,

Rasheeda Cleveland
Assistant Attorney General

RC/jaj
Enclosure

cc: Honorable Kristi Harrington
Alton Chisolm

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.

The Court finds that this Application is untimely. S.C. Code Ann. § 17-27-45(a) provides: "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 statute of limitations applies to all applications filed after July 1, 1996. See Pelouquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he currently challenges on August 29, 2003. The remittitur from Applicant's appeal was issued on January 18, 2005. "The time limitation in S.C. Code §17-27-45(A) provides that, where a defendant appeals his conviction (as Applicant did here), the one-year period begins the date the remittitur is sent by the appellate court—not the date of conviction." See McCoy v. State, 401 S.C.363, 368-69, 737 S.E.2d 623, 626 (2013). Thus, the statute of limitations runs from the date of remittitur from the appeal of the underlying conviction. Therefore, any application for post-conviction relief submitted by Applicant was therefore due on or before January 18, 2006. However, Applicant did not file this Application until October 22, 2015, well after the statutory filing period had expired.

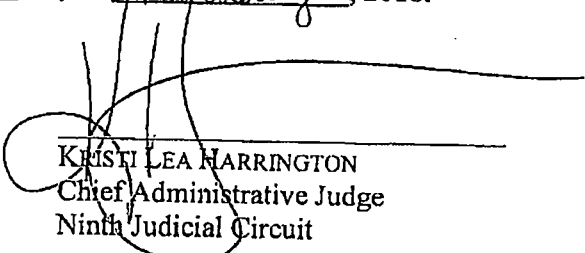
The Court also finds that this Application is successive to Applicant's previous PCR application filed on January 21, 2005. Successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). 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, 409 S.E.2d at 394. 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). The Application currently before the Court seeks post-conviction relief on the basis of "actual innocence." Applicant could have raised his current allegations in his first application. Accordingly, this Court finds that that the Application is successive.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal

AND IT IS SO ORDERED this 23rd day of February, 2018.


KRISTI LEA HARRINGTON
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 13, 2018

The Honorable Kristi Lea Harrington
Chief Administrative Judge
300B California Ave.
Moncks Corner, SC 29461

RE: Alton Chisolm, #241794 v. State of South Carolina
2015-CP-10-~~5478~~

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Dear Judge Harrington:

Enclosed please find the original proposed **Final Order of Dismissal** in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Charleston County Clerk of Court to be filed and served.

Sincerely,

Rasheeda Cleveland
Assistant Attorney General

RC - jaj
Enclosure

cc: Alton Chisolm, #241794