

5

BEFORE THE COURT OF APPEALS
FOR THE STATE OF SOUTH CAROLINA

MR. Michael F. Bailey
S.C.D.C. Id. 273498
APPELLANT Pro Se

NOTICE OF INTENT TO
APPEAL

RECEIVED

APR 02 2018

S.C. SUPREME COURT

v.

STATE OF S. CAROLINA
Respondent

RECEIVED

MAR 29 2018

SC Court of Appeals

May it please the Court?

This case comes by way of APPEAL from the Court of Common Pleas of Anderson County, South Carolina, and Finalized by Signature of Chief Administrative (Law) Judge R. Lawton McArthur. APPELLANT would contend that the South Carolina Code of Laws stands in HIS Favor. The APPELLANT has the unsigned "Final Order of Dismissal", and it is a complete copy of the signed one, this was prepared by the ATTORNEY GENERAL'S OFFICE. Herein are given ample reasons for the granting the appeal.

FIRST off, APPELLANT is NOT schooled in Law, nor is he Educated in Juris Prudence in any way. He has NO Personal Law Books, so due diligence, for Appellant is at the Mercy of the S.C.D.C. Personnel. APPELLANT makes no excuses, BUT states only Facts, The ATTORNEY GENERAL has taken 4 [Four] Years to Finally deal with this issue. APPELLANT would state that S.C. Code Ann. § 17-25-45 & 17-25-50 make NO Allowance for the use of MISDEMEANORS to Enhance Sentences. The ATTORNEY GENERAL on Page 2 under Successiveness Talks about issues that could have been raised previously, BUT Appellant's issues still go unanswered. Also, Aice v. STATE also states that Successiveness is not applicable where "NEWLY Discovered Evidence" is found.

BUT, if as the ATTORNEY GENERAL contends, that Appellant's issues have been raised in a Prior P.C.R.? Then why is Appellant still not getting the Justice He deserves? is it because He's African-American? Appellant was charged with a "FIRST" offense Trafficking? "Simple Possession" Cannot be used at anytime for ENHANCEMENT under § 17-25-45. Code Section 100 of the 16 Codes has been repealed, this is the Code that designates what are Violent Crimes, this Code was what § 17-25-45 got its enhancement, now there is an open Debate over what is or

is not usable for Enhancement.

The APPELLANT Has done over Twenty [20] Years of HIS Life Wrongfully, and it is like no one wants to Hear the Truth, APPELLANT Wants This Honorable Court to Review the Record, APPELLANT Was given Thirty [30] Years Without Proper Reasons For Enhancement. (See "Traverse to STATE'S MOTION" Pages 1-3) For the Reasons given, The APPEAL should be Granted, and the Case sent back for Review or over-Turning.

Respectfully,
s/ Michael Bailey

To The Clerk,

Please Make and send Me back a Clock
STamped-Filed Copy of This Document.

Thank You in Advance,

Michael Bailey

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MAR 29 2018

SC Court of Appeals

sworn to and subscribed before me
this 26 day of March 2018
J. D. Sullivan
(Notary Public of South Carolina)
Commission Expires 2/17/24

SOUTH CAROLINA COURT OF APPEALS
7015 SUMNER STREET, POST OFFICE BOX 11629
Columbia, SOUTH CAROLINA 29217

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APR 02 2018

S.C. SUPREME COURT

MR. Michael F. Bailey
S.C.D.C. No. 273498
APPELLANT Pro Se

v.

STATE OF S. CAROLINA
Respondent

RECEIVED

MAR 29 2018

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned Michael Bailey
00273498 hereby certify, that I have served a
copy of said Document upon the Court and the ATTOR-
NEY GENERAL'S OFFICE by depositing same in the EVANS
CORR. INSTITUTIONS Mailroom Staff's Hands Pursuant to
and in compliance with Houston v. Leak and the Mail
Box Rule.

Michael Bailey

SOUTH CAROLINA COURT OF APPEALS
2015 SUMNER STREET, POST OFFICE BOX 11629
Columbia, SOUTH CAROLINA 29244

From: MR. Michael F. Bailey #273498
F-4-A-170 EVANS CORR. INST.
610 Hwy. 9 West
Bennettsville, S.C. 29512

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MAR 29 2018

SC Court of Appeals

In Re: NOTICE OF INTENT TO APPEAL FINAL
DECISION FROM R. LAWTON MCINTOSH
2014-CP-04-1111 IN THE COURT OF
COMMON PLEAS

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APR 02 2018

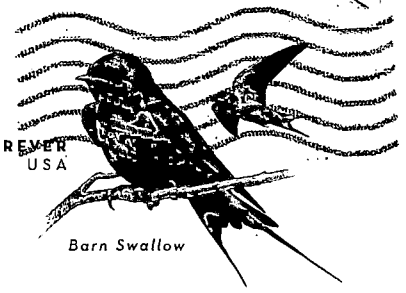
S.C. SUPREME COURT

COVER LETTER

Michael Blakey 273498
E. C. I / FYA / 110
610 Hwy 9 W.
Bennettsville SC 29512

COLUMBIA SC 290

28 MAR 2018 PM 2 L



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MAR 29 2018

SC Court of Appeals

South Carolina Court of Appeals
1015 Sumter Street P.O. Box 11625
Columbia, SC 29211

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Packet

2021 1-162525



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Michael F. Bailey, #273498,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

2014-CP-04-1111

FINAL ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
ANDERSON SC
2015 MAR -9 PM 4:04
COMMON PLEAS AND
GENERAL SESSIONS

This matter comes before the Court pursuant to an application for post-conviction relief filed by Michael F. Bailey (Applicant) on May 29, 2014. Respondent made its Return and Motion to Dismiss on February 2, 2015, requesting the application be summarily dismissed as time barred and successive.

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 March 16, 2015, provisionally denying and dismissing this action, while giving Applicant twenty 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 an Affidavit of Service dated March 31, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant. Applicant filed a response to the Conditional Order of Dismissal entitled "Traverse to State's Motion to Dismiss" on April 7, 2015, which is incorporated herein.

In his reply to said Order, Applicant asserts a prior arrest of simple possession of marijuana was used to enhance his sentence, as well as a third offense. Applicant contends he was never provided notice from the State that it was seeking to enhance his sentence based on his

prior convictions.

This Court has reviewed Applicant's response to Respondent's Motion to Dismiss and the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Successiveness

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). This Court finds no reason why Applicant could not have raised these claims in his previous state post-conviction relief action and/or federal habeas actions – and indeed it appears Applicant has raised many, if not all, of these allegations in prior actions.

Specifically, Applicant contends his sentence was enhanced based on an arrest for simple possession of marijuana, as well as other prior convictions—an allegation Applicant raised in his both his first post-conviction relief action and his federal habeas action. Applicant, however, provides no reason as to why he could not have raised this issue in his prior post-conviction relief proceedings. Applicant's bare assertions, without more, do not meet the bar required to permit a successive application. Accordingly, Applicant's current allegations could have been, or were in fact, raised in prior proceedings. This Court, therefore, finds this application must be summarily dismissed as successive.

Statute of Limitations

The Court finds this application for post-conviction relief must also be summarily

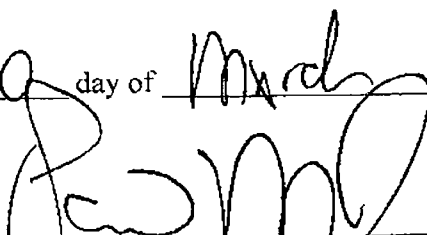
dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). Applicant has completely failed to show this Court any reason why his application should be considered timely. Therefore, this application must be summarily dismissed as untimely.


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 such a *prima facie* showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal and above, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 10 day of March, 2018


R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

 South Carolina.

COMMON PLEAS AND
GENERAL SESSIONS

2018 MAR -9 PM 4:05

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ANDERSON SC



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Michael F. Bailey,)
 S.C.D.C. No. 273498,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE TENTH JUDICIAL CIRCUIT
 2014-CP-04-1111

2015 MAR 16 10:04
 COMMON PLEAS AND
 GENERAL SESSIONS

FILED-CLERK'S OFFICE
 ANDERSON SC

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Michael Bailey (Applicant) on May 29, 2014. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the January 1998 term of the Anderson County Grand Jury for Trafficking Crack Cocaine (98-GS-04-279). Applicant's case was called for trial on January 12, 1999, but after jury selection Applicant absconded. He was tried in his absence by the Honorable James W. Johnson and found guilty on January 13, 1999. Applicant was represented by William Yarborough, Esquire. Applicant was arrested two years later and on March 12, 2001, his sentence was published to him by the Honorable John W. Kittredge. Applicant was represented at sentencing by Gregory A. Newell, Esquire. Applicant was sentenced to thirty (30) years imprisonment.

Applicant's counsel filed a Notice of Appeal on March 13, 2001. On July 20, 2001 the South Carolina Court of Appeals dismissed the appeal because the initial brief was not filed. The Remittitur was returned on August 7, 2001.

2002-CP-04-2145

On July 22, 2002, Applicant filed an application seeking post-conviction relief, alleging:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel
3. Improper enhancement of sentence, sentence outside statutory range for facts
4. Violation of Sixth Amendment right to counsel

Respondent filed a return and an evidentiary hearing was held on April 19, 2005. Applicant was represented by J. Faulkner Wilkes, Esquire. On June 8, 2005, the Honorable Alexander S. Macaulay issued an order dismissing Applicant's PCR Application but finding that Applicant was entitled to a belated appeal under White v. State, 263 S.C. 100, 208 S.E.2d 35 (1974). Applicant filed a Motion to Alter or Amend the Judgment under Rule 59(e) which was denied July 28, 2005.

Applicant's counsel subsequently filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, raising the following claim:

5. Petitioner was denied the right to direct appeal by ineffective assistance of appellate counsel.

Applicant's counsel also filed a Brief Pursuant to Rule 227(i) raising the following direct appeal issue:

1. Where the appellant was charged with trafficking based on a single incident of possession, did the admission of testimony that Appellant had been witness' "drug dealer" for about a year constitute undue prejudice which requires reversal.

The South Carolina Supreme Court issued an Order granting certiorari, considering the issue for direct appeal, and rejecting the direct appeal. The lower court's ruling was affirmed and a Remittitur was sent February 8, 2007.

3:08-00259-TLW-JRM

On January 23, 2008, Applicant filed a pro se petition to the United States District Court seeking federal habeas relief under 28 U.S.C. § 2254. Applicant raised the following issues:

1. Coerced Confession
 - a. I was told by Kelvin Marsee, the arresting officer if I cooperated and wrote a detailed statement he could guarantee myself and two other P.R. bonds.
2. Denial of effective assistance of counsel
 - a. Counsel's failure to object where prosecutor misled the jury on the facts of case in relation to constructive possession of drug as they sat in bushes outside a professional park and as another person had actual possession. Counsel – Bill Yarborough.
3. Denial of effective assistance of appellate counsel
 - a. My lawyer Gregory Newell fail to perfect by direct appeal which was later dismissed.
4. Improper enhancement
 - a. My trafficking charge was enhanced to a third offense from a possession of marijuana charge.

On May 2, 2008, Respondent filed a motion for summary judgment. Applicant filed a response on May 19, 2008. On January 15, 2009, the Honorable Joseph R. McCrorey issued a Report and Recommendation, recommending the matter be dismissed as filed outside the statute of limitations. The U.S. District Court rejected the Report and Recommendation based on Jiminez v. Quarterman, 555 U.S. 113 (2009), and the case was remanded back to Judge McCrorey. An order was issued February 19, 2009, directing Respondent to file a second return, which Respondent filed April 3, 2009. Applicant filed his response on April 15, 2009.

On August 31, 2009, Judge McCrorey filed a Report and Recommendation. On December 16, 2009, the Honorable Terry L. Wooten issued an Order adopting the Report and

Recommendation, granting Respondent's motion for summary judgment, and dismissing Applicant's petition.

CURRENT APPLICATION

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

1. Lack of Jurisdiction
 - a. Indictment was not filed with the clerk
 - b. 180-day Rule Violation
2. Void Sentence
 - a. Indictment did not state it was his third offense
3. No Criminal Charge
 - a. The indictment did not charge Applicant with a crime

Before this Court are the records of the Anderson County Clerk of Court regarding Applicant's convictions, Applicant's prior PCR records, and the South Carolina Department of Corrections' records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (1985) 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).

This Court finds that the current allegations could have been raised in prior 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).

Statute of Limitations

The Court further finds that this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). 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 was convicted of the offenses he challenges on January 1, 1999. He was granted a belated appeal, which was denied and a Remittitur issued on February 8, 2007. Applicant was

therefore required to file his application on or before **February 8, 2008**. This Application was filed on May 29, 2014, which was over six (6) years 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) (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, because Applicant failed to file within the time mandated by the Post-Conviction Procedure Act, Applicant's post-conviction relief application must be summarily dismissed.

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

Office of the Attorney General
Justin J. Hunter, Esquire
PCR Division – 10th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 12 day of March, 2015.



J. CORDELL MADDOX, JR.
Chief Judge for Administrative Purposes
Tenth Judicial Circuit

Anderson, South Carolina

FILED - CLERK'S OFFICE
ANDERSON SC
2015 MAR 16 A 10:05
COMMON PLEAS AND
GENERAL SESSIONS

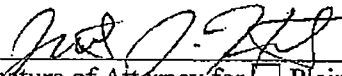
STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 MICHAEL F. BAILEY)
)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-04-1111

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED-CLERK'S OFFICE
 ANDERSON SC
 2015 MAR 16 A 10:04
 COMMON PLEAS AND
 GENERAL SESSIONS

Plaintiff's Attorney: Michael F. Bailey, Bar No. _____ Address: Ridgeland Correctional Institution Ridgeland, SC 29936 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	February 2, 2015 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	



ALAN WILSON
ATTORNEY GENERAL

February 2, 2015

The Honorable J. Cordell Maddox, Jr.
Chief Administrative Judge, Tenth Circuit
Post Office Box 8002
Anderson, South Carolina 29622

FILED-CLERK'S OFFICE
ANDERSON SC
2015 MAR 16 A 10:04
COMMON PLEAS AND
GENERAL SESSIONS

Re: Michael F. Bailey, #273498 v. State of South Carolina
2014-CP-04-1111

Dear Judge Maddox:

Enclosed please find the original proposed **Conditional Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign it. You may then file the order with the Clerk and have him serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Justin J. Hunter
Staff Attorney

JJH/cc
Enclosures

cc: Michael F. Bailey, #273498