

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM York COUNTY
COURT OF COMMON PLEAS

HONORABLE Daniel D. Hall
CIRCUIT COURT JUDGE

Case No. 2016-CP-46-3176

RECEIVED
MAY 09 2018
S.C. SUPREME COURT

Victor L. Huntley
268632

Appellant

v.

State of South Carolina

Respondent

NOTICE OF APPEAL

Appellant Victor L. Huntley appeals the order of the Honorable Daniel D. Hall dated Feb. 26th 2018, dismissing Post Conviction Relief without a hearing. The appellant received notice of the dismissal from the Broad River Correctional Institution Lisa Brown-Alston 4-27-18. This notice of appeal has been filed in a timely manner. See attachment of Notice of Appeal Explanation required in accordance with Rule 243(c) SCAR.

Respectfully submitted

s/ Victor L. Huntley
268632

cc: J. Rutledge Johnson
Office of the Attorney General
PO Box 11548
Columbia, SC 29211

Mr. David Hamilton
Clerk of Court York County
P.O. Box 649
York S.C. 29745

Sworn before me this 15th day
of May, 2018
Jennifer Washington
Notary Public of South Carolina

Daniel E. Shearouse
Clerk of Court Supreme Court
PO Box 11330
Columbia, SC 29211

My commission expires
March 8, 2020

Notice Of Appeal / Explanation

Explanation Required Pursuant Rule 243(C). SCACR
Applicant / Appellant Victor L. Huntley #268632

RECEIVED

MAY 09 2018

PCR After Discovered Evidence Filed (10-27-2016)

Conditional Order To Dismiss (6-20-2017)

S.C. SUPREME COURT

Motion Against Conditional Order to Dismiss (7-5-2017)

Motion To Amend PCR After Discovered Evidence Application (12-7-17)

Final Order To Dismiss (4-27-18)

A Constitutional right Violation and Jurisdiction can be raised at anytime; therefore the matter at hand is dealing with the appellant being denied his right to due process as granted by the 5th and 14th amendment and jurisdiction.

1.) The appellant contends that his Constitutional rights by the 5th and 14th amendments was Violated by way of denied and deprived of a fair sentencing due to an improper enhancement statute. Appellant's right to due process was violated when state Solicitor

(1)

Mr. Brackett applied the 17-25-45 two strike statute to the appellant prior out-of-state (1986 Conviction). Where the Legislative intent and stipulations are clear language when it states that the 17-25-45 statute applies prospectively to all crimes committed on or after that effective date of January 1, 1996 and not before. By the State Solicitor's applying the statute retroactive in its operation also was a violation of Article III and 34 where it states Special Laws Prohibited: The General Assembly of this state shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit: To Change, amend or extend Charter there of. *Amend to Change the wording of; Specify, to formally alter (a statute, Constitution, motion, etc.

2.) The appellant contends that the Solicitor was without Jurisdiction to serve a written notice that he was seeking life without parole on the appellant. The appellant filed a PCR After Discovered

Evidence 17-27-45(c) Under 29 to have the issue address in Court. The Court moved to have the appellant PCR After Discovered Evidence, dismiss on the grounds of it being Successive, and statute of limitation therefore it was not heard. The issue of Jurisdiction of the Court while sentencing the appellant does not Carry a rule or law of successive or a statute of limitations. Because Jurisdiction can be raised at anytime the issues that are being brought forth before this Court have never been heard. The appellant have evidence of Material Fact's and Law would prove beyond a reasonable doubt that the Solicitor and the Court was without Jurisdiction to sentence the applicant under the (17-25-45 two strike) statute. And the Solicitor Mr. Brackett was also without Jurisdiction to State while sentencing the applicant that the applicant Status is a repeat and prior most serious offender under the Laws of North Carolina and ask the Court

to make those statements part of the record for the purposes of sentencing. To establish the appellant's prior convictions without "Material Facts or Law."

3.) The appellant contends that the Court and the Solicitor Mr. Brackett was without Jurisdiction to alter a Statute from : prospectively to retroactive which by doing so violates (Article III § 34, Special Laws Prohibited). Appellant should be granted the opportunity to appeal the Lower Court, since Genuine Issues of Material Facts and Law have not been resolved. The appellant has provided specific reason, that his proceeding should continue. Appellant knows that Extreme Prejudice occurs when one's legal rights to due-process as well as the legal right to correct a sentence is denied.

Applicant respectfully and humbly ask the
Honorable Court to allow the Applicant to appeal.
Because these issue was not ruled upon by the lower court.

Respectfully Submitted

s/ Victor Huntley
Victor L. Huntley #268632
BRCI Marion Room 147
4460 Broad River Rd
Columbia, S.C. 29210

Date 5-1-18

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM York COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAY 09 2018

Daniel D. Hall
CIRCUIT COURT JUDGE

S.C. SUPREME COURT

Case No. 2016-CP-46-3176

Victor L. Huntley
#268632

Appellant

V.

State of South Carolina

Respondent

PROOF OF SERVICE

I have served Notice of Appeal to David Hamilton, Clerk of Court
York County, P.O. Box 649 York S.C. 29745

The notice was sent by depositing an envelope in the United States Mail being properly addressed with First-Class postage prepaid.

Respectfully submitted

SI Victor L. Huntley
268632

Sworn before me this 1st day

of May, 2018
Jennifer Washington
Notary Public of South Carolina

cc: J. Rutledge Johnson
Office of the Attorney General
PO Box 11548
Columbia, SC 29211

Daniel E. Shearouse
Clerk of Court Supreme Court
PO Box 11330
Columbia, SC 29211

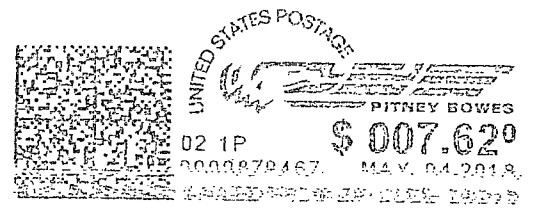
My commission expires
March 8, 2028

STOR L. HUNTLEY 268632 Marion 141

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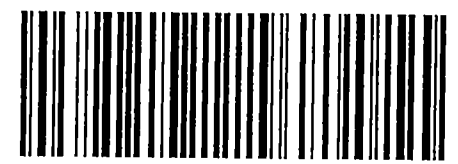
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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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RECEIVED

MAY 04 2018

BRCI MAILROOM

Mr. Daniel E. Shearouse
 Clerk Of Court Supreme Court
 P.O. Box 11330
 Columbia, S.C. 29211

RECEIVED

MAY 09 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
VICTOR HUNTLEY, #268632)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-463176

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Victor Huntley, #268632, Bar No. _____ Address: Kirkland Correctional Institution Columbia, South Carolina 29210 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

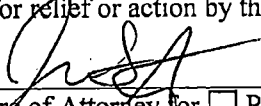
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 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 Plaintiff / Defendant

February 20, 2018
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - 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: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

2018 MAR 26 AM 10:18
 DAVID HAMILTON
 C.C.J.P. & GS
 YORK COUNTY, SC

FILED-RECEIVED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Victor L. Huntley,)
 S.C.D.C. No. 268632,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3176

CONDITIONAL ORDER OF DISMISSAL

DAVID HAMILTON
 S.C. C.P. & GS
 YORK COUNTY, SC

2018 MAR 26 AM 10:18

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Victor Huntley (Applicant) on October 27, 2016. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant was indicted for assault and battery with intent to kill (count one of 99-GS-46-1357), possession of a handgun and possession of a weapon during the commission of a violent crime (count two of 99-GS-46-1357), armed robbery (count one of 99-GS-46-1358), possession of a weapon during the commission of a violent crime (count two of 99-GS-46-1358), and possession of a pistol by a person convicted of a crime of violence (99-GS-46-1359). Harry Dest and Lisa Collins, Esquires, represented the Applicant on the charges.

On August 7, 2000, Applicant proceeded to a jury trial on the indictments. Applicant was found guilty of all charges. The Honorable John C. Hayes, III, sentenced Applicant to imprisonment for life without parole for assault and battery with intent to kill (count one of 99-GS-46-1357), five years for possession of a weapon during the commission of a violent crime (count two of 99-GS-46-1357), life without parole for armed robbery (count one of 99-GS-46-

1358), five years for possession of a weapon during the commission of a violent crime (count two of 99-GS-46-1358), and five years for possession of a pistol by a person convicted of a crime of violence (99-GS-46-1359). All of the sentences were run concurrently.

Applicant appealed his conviction. He was represented by Tara S. Taggart of the South Carolina Office of Appellate Defense on the appeal who filed an Anders brief. The South Carolina Court of Appeals dismissed the appeal on April 25, 2002. State v. Victor Huntley, Op. No. 2002-UP-298 (Ct. App. Filed April 25, 2002). The Applicant filed a Petition for Rehearing with the Court of Appeals. The petition was denied on August 22, 2002. The remittitur was sent October 3, 2002.

PCR#1: 2002-CP-46-2050

On September 9, 2002, Applicant filed his first application for post-conviction relief, alleging he was being held in custody unlawfully for the following reasons:

1. State failed to provide Brady discover materials
2. Ineffective assistance of counsel
 - a. Failure to ask a witness whether Applicant was using drugs
 - b. Failure to object to Solicitor's final argument

Respondent filed a Return on December 12, 2003. Thereafter, a hearing convened on July 22, 2004, before the Honorable Lee S. Alford. Applicant was present and represented by Douglas Gay, Esquire. Assistant Attorney General Arie Bax appeared on behalf of the State. After the hearing, the PCR court denied and dismissed Applicant's PCR Application with prejudice on October 6, 2004.

Applicant filed a Notice of Appeal with the South Carolina Supreme Court on November 19, 2004. The South Carolina Supreme Court dismissed the action on November 24, 2004. The Remittitur was sent December 16, 2004.

Current Application

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

1. After Discovered Evidence

- a. "State's Solicitor violated applicant's United States Federal Rights Fifth and Fourteenth Amendments by denying and depriving the applicant of a fair sentencing due to miscarriage of justice, procedural Due Process and perjury testimony, were on two separate occasions the state's solicitor misled the court."

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds Applicant's second and current PCR application must be summarily dismissed because it is successive to his 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 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 (2014) 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 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 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., 305 S.C. 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. The applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds that Applicant could have raised his current grounds for relief in his prior post-conviction relief application. This Court finds that Applicant could have raised the issue regarding the Solicitor's comments to the trial judge during the sentencing phase of his trial in his first PCR hearing. Applicant has failed to present a sufficient reason why he could not have raised the current allegations in his previous post-conviction relief application, and this application must be summarily dismissed as successive to the previous application.

Statute of Limitations

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §17-27-10 to -160. 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).

The remittitur from Applicant's unsuccessful direct appeal was issued on October 3, 2002. This Application was filed on October 27, 2016, which was after the statutory filing period had expired.

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 Court must summarily dismiss this application for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Newly-Discovered Evidence

Applicant also alleges newly discovered evidence regarding the Assistant Solicitor's statements to the trial judge during the sentencing phase of Applicant's trial. This Court finds that Applicant has failed to make a prima facie showing that he is entitled to relief.

A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Applicant has failed to state how the evidence is material to guilt or innocence or would change the result if a new trial was had. Applicant has also failed to address

why it could not have been discovered previously by the exercise of due diligence, as his allegation concerns words spoken at the trial itself and could have been raised in his first PCR application. Before a Court will hold an evidentiary hearing, the 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). Because Applicant has failed to make such a showing, this Court finds that this allegation be denied and dismissed.

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

Office of the Attorney General
Justin J. Hunter, Esquire
PCR Division – 16th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 26th day of February, 2018.



~~JOHN C. HAYES, III~~ Daniel D. Hall
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina