

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON)	
Shaheen Cabbagestalk,)	Case No.: 2016-CP-17-00013
S.C.D.C. No. 295567,)	
)	
Applicant,)	
)	FINAL ORDER OF DISMISSAL
v.)	
)	
State of South Carolina)	
)	
Respondent.)	
)	

FILED
 GWENT, IVY
 2018 APR 11 AM 10:42
 CLERK OF COURT
 DILLON COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed January 8, 2016. Respondent made its return on or about February 13, 2018, requesting the application be summarily dismissed as untimely 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 signed January 15, 2018, and filed February 28, 2018, provisionally denying and dismissing this action, while giving the Applicant 20 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 12, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document titled "Request for Hearing" on March 22, 2018, in which Applicant simply requests hearings on his motions for default against the State. Applicant thereafter filed a response to the Conditional Order on March 29, 2018, arguing the State was in default in failing to respond to the application for relief. Applicant further argues not all issues were addressed in the first application for post-conviction relief.

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.

As to the demand for relief in default, Applicant's request is denied. The grant of post-conviction relief due to State's failure to reply or lateness of reply is not appropriate. See Rule 55(e), SCRPC ("No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . unless the claimant establishes his claim to relief by evidence satisfactory to the Court[.]"); S.C. Code Ann. § 17-27-70(b) ("Disposition on the pleadings and record is not proper if there exists a material issue of fact."). A colorable claim for relief must be supported by evidence and testimony on the record and a meritless application cannot be saved by inaction by the State.

As to the argument that prior post-conviction relief counsel failed to adequately raise all issues, the Court finds that the alleged ineffectiveness of prior post-conviction relief counsel is not sufficient reason to grant a successive application for relief. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991).


As to Applicant's demand for a hearing, because Applicant has not raised any questions of law or fact that would be resolved by a hearing, Applicant's request is denied.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, as well as above, 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 5th day of April, 2018.

Chesterfield, South Carolina.



PAUL M. BURCH
Chief Administrative Judge
Fourth Judicial Circuit

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON)	
Shaheen Cabbagestalk,)	Case No.: 2016-CP-17-00013
S.C.D.C. No. 295567,)	
)	
Applicant,)	
)	CONDITIONAL ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
 GWEN T. HAYES
 2018 FEB 28 AM 10:01
 CLERK OF COURT
 DILLON COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by Shaheen Cabbagestalk (Applicant) on January 8, 2016. 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 Dillon County Clerk of Court. Applicant was indicted at the March 2007 term of the Dillon County Grand Jury for assault and battery with intent to kill (2007-GS-17-00363) and armed robbery (2007-GS-17-00364). Glenn Manning, Esquire, represented Applicant; Kinard Redmond and Lee Hayes, of the Fourth Circuit Solicitor’s Office, prosecuted the case. Applicant proceeded to trial on August 27-28, 2007, before the Honorable Howard P. King and a jury. During the direct testimony of the State’s second witness, Applicant decided to change his plea from not guilty to guilty. On August 28, 2007, Applicant pled guilty to armed robbery; the ABWIK indictment was dismissed *nolle prosequi*. Judge King sentenced Applicant to imprisonment for a term of 18 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Cabbagestalk, Op. No. 09-UP-528 (S.C. Ct. App. filed Nov. 19, 2009). Applicant subsequently filed a document with the Court of Appeals that was treated as a Petition for Rehearing. On January 21, 2010, the South Carolina Court of Appeals filed its Order Denying Petition for Rehearing. The Remittitur was issued on February 25, 2010.

During the pendency of the appeal in the Court of Appeals, Applicant appears to have filed a deluge of "repetitive and frivolous" *pro se* petitions in the Supreme Court of South Carolina, up to an including a letter received by the Clerk of Court on February 13, 2008. As a consequence of that letter and prior filings, the Supreme Court issued on March 5, 2008, an order to restrict Applicant from filing in the Court's original jurisdiction. In re: Shaheen Cabbagestalk, S.C. Sup. Ct. Order filed March 5, 2008 (citing In re Maxton, 325 S.C. 3, 478 S.E.2d (1996)).

First PCR Application: 2010-CP-17-00091

Applicant filed his first application for post-conviction relief on March 9, 2010 (2010-CP-17-00091). He alleged the following grounds for relief in his application:

1. Ineffective assistance of plea counsel;
2. Ineffective assistance of appellate counsel;
3. Involuntary guilty plea;
4. Prosecutorial misconduct;
5. Judicial misconduct
6. Illegal grand jury proceedings;
7. Brady issue;
8. Lack of a preliminary hearing;
9. Lack of subject matter jurisdiction;
10. Not indicted within 90 days;
11. Sentencing judge does not determine parole eligibility;

12. Erroneous judgment;
13. Numerous constitutional rights violated.

In an amendment filed on April 29, 2010, the Applicant makes the following additional allegations:

14. Double jeopardy.
15. Violation of Fifth Amendment.
16. Not the defendant listed in the indictment (James Cabbagestalk).

Respondent made its return on or about May 21, 2010. Applicant filed a motion to relieve his counsel, Heather M. Cannon, Esquire, and a hearing into the matter was convened on September 14, 2010, before the Honorable Thomas A. Russo. Judge Russo, from the bench, declined to grant that motion.

Throughout the pendency of the PCR action, Applicant, separate from counsel, continued to submit opaque filings with the Dillon County Clerk of Court, the Supreme Court of South Carolina, and the U.S. District Court for the District of South Carolina—and possibly other forums not immediately known to Respondent at the time of this writing. By Order filed January 26, 2011, the Honorable J. Michael Baxley issued an “Order Directing Applicant to Cease Contacting Clerk’s Office,” directing that “all filings or communications of any nature whatsoever with the Court or the Clerk shall be through Applicant’s counsel.” The Order further directed the Dillon County Clerk of Court to return, without filing, any communications sent by Applicant. By letter dated February 27, 2012, the Clerk of the Supreme Court of South Carolina informed Mr. Cabbagestalk that it would take no action on certain materials by reason of a Maxton order. Federal courts interpreted Applicant’s communications as a 42 U.S.C. § 1983 action, which was ultimately dismissed. See Cabbagestalk v. Terry, 3:11-508-TMC-JRM, 2012 WL 465003 (D.S.C. 2012) (Order and Recommendation); Cabbagestalk v. Terry, 3:11-508-

TMC-JRM, 2012 WL 464915 (D.S.C. 2012) (Opinion & Order); Cabbagestalk v. Terry, 477 Fed.Appx. 959 (4th Cir. 2012).

Applicant renewed his motion to relieve his counsel, Heather M. Cannon, Esquire, and a hearing into the matter was convened on September 12, 2011, before the Honorable William H. Seals, Jr. Judge Seals, from the bench, declined to grant that motion.

An evidentiary hearing into the matter was convened on May 15, 2012, before the Honorable J. Michael Baxley.¹ Applicant was present at the hearing and represented by Heather M. Cannon, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf. Applicant's uncle, James Cabbagestalk, and trial counsel Glenn B. Manning, Esquire, also testified. By written order dated June 4, 2012, and filed June 6, 2012, Judge Baxley denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Susan B. Hackett, Esquire, filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant timely filed five *pro se* responses to the Johnson petition. The Supreme Court of South Carolina denied Applicant's petition by unpublished opinion. Cabbagestalk v. State, Sup. Ct. Order filed Sept. 11, 2014. The Remittitur was issued on September 29, 2014.

First Federal Habeas Action: 3:11-2665-SB-JRM

During the pendency of the above PCR, Applicant filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on October 13, 2011. In his Petition, Applicant set forth the following four grounds for relief:

¹ By handwritten *pro se* motion dated May 23, 2012, Applicant sought to recuse Judge Baxley by reason of Applicant's pending 42 U.S.C. § 1983 action which named him as a defendant, referenced above. See Cabbagestalk v. Terry. The Court declined to respond to the missive for reasons stated in its Order of Dismissal of June 6, 2012.

1. "I'm in need of the United States District Courts to inject into this PCR Action 2010-CP-17091 the state never disputed none of my allegations in my application as S.C. Rules of Civ. Proc. Rule 12 states) no Return was done. Neither I, or David Paul Jordan, or Ms. Heather M. Cannon or the Dillon County Clerk of Court's got an return to PCR Application as stated if you pled guilty the state is to answer your application back in 60 days being a PCR is an civil action I filed a Notice of Rule 12 of Civil Procedure violation and a motion for default and a motion for summary Judgment Ms. Hyatt sent back the motion for summary judgment and motion for default which was never filed and my ineffective lawyer Mr. David Paul Jordan I never seen or ever heard from gave all my court paperwork to Ms. Heather M. Cannon When I feel was sent at me by the state attorney generals office she had no order on September 14th 2010 to be in court with me to represent me my David Paul Jordan was said (Not once but twice) by Ms. Cannon he don't practice law Neither Judge did anything about this Judge Thomas A. Russo on (Sept. 14 2010) or Judge Seals on (Sept. 12th 2011) Law authorizes the Court to grant a motion for summary judgment by either party 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. This PCR application has been going on since March 9th 2010 at 4:08 pm it's clearly passed an year and violates orders of Chief Justice J. Woodrow Lewis Effective October 1st 1983 on Supreme Court ORDER, This is why I need an federal judges help to inject in to my case PCR Court's and pay close attention the head judge over courts of common pleas is Michael J. Baxley Chief Administrative.
2. "I've never been indicted until this very day the court's think they indicted me I'm not James Cabbagestalk that's my uncle he's still free But the got me locked up they indicted him and gave him 18 yrs for armed robbery but got me Shaheen Cabbagestalk doing his prison time[.]"
3. "I am asking the U.S. District Courts federal Judge to please ORDER PCR Court's being they violated Chief Justice T. Woodrow [L]ewis ORDER Release me out of prison out SCDC custody. Discharge case. [citation omitted]"
4. "ORDER the prison system to release me they have me held illegally with an invalid commitment order violating SCDC policy Op—21.09[.]"

Respondent filed its Return and Motion for Summary Judgment on November 23, 2011, arguing Applicant's state court remedies had not yet been exhausted. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued on July 6, 2012, a Report and Recommendation that Respondent's motion for summary judgment be granted. Cabbagestalk v.

McCall, 3:11-2665-SB-JRM, 2012 WL 3096040 (D.S.C. 2012). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on July 30, 2012, and accepted the Report and Recommendation for summary judgment. Cabbagestalk v. McCall, 3:11-2665-SB-JRM, 2012 WL 3096049 (D.S.C. 2012).

Second Federal Habeas Action: 5:14-3771-RMG-KDW

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on September 22, 2014 (C.A. No. 5:14-3771-RMG-KDW). In his Petition, Applicant set forth the following *twenty one* grounds for relief:²

1. "Never indicted by a Grand Jury of (12) legally Qualified for Armed Robbery for the name (Shahcen Cabbagestalk"
2. "Never been sentenced to (No) time James Cabbagestalk was SCDC wasn't to accept me pen there policy OP-21.09 Inmate Records Plan"
3. "Ineffective Assistance of (All) counsels/Attorneys threout this Entire appealing of this case intrinsic + extrinsic fraud messed up my case along with Courts of Appeal Clerk Kenneth A. Richstad abused his authority on my appeal."
4. "Invalid plea (Involuntary Guilty Plea) unintelligent unknowingly plea (I was suppose to received the negotiated plea to (10) yrs all others ran concurrent 2-26-07"
5. "Extrinsic Fraud, Intrinsic Fraud"
6. "The PCR Court erred in finding the guilty plea was knowingly, intelligently, and voluntarily entered where I presented evidence there was that the plea counsel advised me incorrectly concerning the sentence I'd receive, as well there's a negotiated plea for 10 years."
7. "Misidentification/In Court"
8. "OP-21.09 Inmate Records Plan"
9. "(Failed to instruct the jury on alibi (My alibi was (Alma Jackson))"
10. "PCR Ruleing is (frivilous) not based on facts and the judge violated several cannons and law which prejudice me because (Before ruleing on this case the judge never examined any of my evidence to prove my allegations rather facts. By this judge not fully examining the record or at all his caused a fatal judgment which his courts is asked to vacate[.]"
11. "prosecutor misconduct"
12. "preliminary hearing"

² In the interest of brevity, Applicant's allegations are excerpted without the supporting facts.

13. "Ineffective assistance of writ of certiorari counsel Susan B. Hackett"
14. "Invalid plea collateral consequences"
15. "PCR Attorney ineffective Heather M. Cannon"
16. "Not indicted by 12 legally qualified grand jurors"
17. "No Bond Hearing"
18. "Ineffective Trial Counsel"
19. "Not indicted within 90 days"
20. "Breach of Contract"
21. "PCR Application and Motions filed with it."

By subsequent amendment, Applicant added an additional ten allegations:

1. "Overlooking of trial court of preliminary hearing rights and mistrial or vacation of indictments and warrants."
2. "Plea offer forgotten"
3. "Erroneous judgment"
4. "Lack of subject matter jurisdiction"
5. "5th Amendment of Constitution (indictment claim)"
6. "prosecutorial misconduct: the prosecutor knew I was never indicted knew this before trial and at trial still didn't ask for mistrial or withdraw invalid charges"
7. "judicial misconduct: the judge at trial Howard P. King abused his authority knew I never been indicted still amended the indictment forced me in prison no paperwork for armed robbery say my name until this very day and the appeals court appeals were for James Cabbagestalk."
8. "Ineffective appellant counsel: filed a bogus appeal and never advised me of my right for a petition for rehearing. See Exhibit enclosed it's untimely because of her."
9. "See exhibit Senator Ralph Anderson told SCDC Director Jon Ozmint Let me go grant me relief dated 7/9/09."
10. "PCR Court ruling not based on fact and conclusion of law."

Respondent filed its Return and Motion for Summary Judgment on February 13, 2015.

Applicant filed a motion to amend³ on January 15, 2015, as well as three motions for recusal on January 12, 2015, February 23, 2015, and March 4, 2015, arguing the Court had shown favoritism and that a conflict of interest existed by virtue of his separate litigation against both the Honorable Kaymani D. West, United States Magistrate Judge, and the Honorable

³ The motion did not actually seek to amend the petition for writ of habeas corpus, but instead demanded production of various items from Respondent.

Richard Mark Gergel, United States District Judge. Judge West denied the lot of those motions by order dated March 16, 2015. Cabbagestalk v. McFadden, 5:14-3771-RMG-KDW, 2015 WL 10684609 (D.S.C. 2015).

Judge West thereafter issued on June 8, 2015, a Report and Recommendation that Respondent's motion for summary judgment be granted. Cabbagestalk v. McFadden, 5:14-3371-RMG-KDW, 2015 WL 4077211 (D.S.C. 2015) (as incorporated in District Court order). Judge Gergel denied Applicant's Petition on July 1, 2015, and accepted the Report and Recommendation for summary judgment. Id. On July 10, 2015, Applicant filed document raising additional grounds, which the Court construed as a Rule 59(e) motion to reconsider; the Court denied that motion by order filed July 13, 2015. Cabbagestalk v. McFadden, 5:14-3771-RMG-KDW, 2015 WL 4232796 (D.S.C. 2015).

On April 15, 2015, Applicant filed a notice of appeal from Judge West's March 16, 2015, denial of his motions (No. 15-6551). On July 23, 2015, Applicant filed a notice of appeal from Judge Gergel's dismissal of his petition for writ of habeas corpus and denial of his 59(c) motion (No. 15-7161). The cases were consolidated by the Fourth Circuit by Order filed August 12, 2015. The Fourth Circuit dismissed the appeal on December 21, 2015, for want of a certificate of appealability. Cabbagestalk v. McFadden, 626 Fed.Appx. 435 (4th Cir. 2015).

Applicant filed two additional Rule 59(e) motions to reconsider in the district court on December 16, 2015, and January 29, 2016. Judge Gergel denied those motions by order filed February 1, 2016, and further ordered the Clerk of Court "not to accept for filing nay future motions for reconsideration in this case without special leave of court." Cabbagestalk v. McFadden, 5:14-3771-RMG, 2016 WL 1554682 (D.S.C 2016). Applicant timely filed a notice

of appeal (No. 16-6360), which the Fourth Circuit dismissed on August 1, 2016, for want of a certificate of appealability. Cabbagestalk v. McFadden, 667 Fed.Appx. 430 (4th Cir. 2016).

Third Federal Habeas Action: 5:14-4690-RMG-KDW

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on December 12, 2014 (C.A. No. 5:14-4690-RMG-KDW). The Honorable Kaymani D. West, United States Magistrate Judge, issued on December 29, 2014, a Report and Recommendation that the Petition was duplicative and should be dismissed without prejudice. Cabbagestalk v. McFadden, 5:14-4690-RMG-KDW, 2014 WL 11511730 (D.S.C. 2014). The Honorable Richard Mark Gerger, United States District Judge, dismissed Applicant's Petition without prejudice on January 16, 2015, and accepted the Report and Recommendation. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals on February 6, 2015 (No. 15-6181). The Fourth Circuit Court of Appeals dismissed Applicant's appeal on May 22, 2015, for want of a certificate of appealability. Cabbagestalk v. McFadden, 604 Fed.Appx. 285 (4th Cir. 2015).

Three Petitions for Writ of Mandamus: Nos. 15-1282, 15-1367, 15-1396

On March 18, 2015 (No. 15-1282), April 9, 2015 (No. 15-1367), and again on April 16, 2015 (No. 15-1396), during the pendency of the above action, Applicant filed three petitions for writs of mandamus in the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit denied the latter two petitions on July 27, 2015. In re: Cabbagestalk, 610 Fed.Appx. 285 (4th Cir. 2015); In re: Cabbagestalk, 611 Fed.Appx. 139 (4th Cir. 2015). Applicant responded by filing a fourth petition for writ of mandamus on July 29, 2015 (No. 15-1849). The Fourth Circuit denied the first petition on September 11, 2015. In re: Cabbagestalk, 615 Fed.Appx. 801 (4th Cir. 2015). The Fourth Circuit denied the fourth petition on December 21, 2015. In re: Cabbagestalk, 626 Fed.Appx. 431 (4th Cir. 2015).

Applicant Restricted from Federal Filings: 5:16-3314-RMG-KDW

Applicant filed a *pro se* complaint against Respondent and the South Carolina Department of Corrections on October 3, 2016, in the United States District Court for the District of South Carolina (5:16-03314-RMG-KDW). The Honorable Kaymani D. West, United States Magistrate Judge, issued on November 18, 2016, a report and recommendation that noted Applicant had “filed 20 non-habeas civil actions in this court since May 2006,” took judicial notice that at least three of them recorded “strikes,”⁴ recommended that Applicant’s motion to proceed *in forma pauperis* be denied, and that it be dismissed if he failed to pay the total fee due of \$400. Cabbagestalk v. South Carolina, 5:16-3314-RMG-KDW, 2016 WL 7443259 (D.S.C. 2016). The Honorable Richard Mark Gergel denied Applicant’s motion on December 27, 2016, and accepted the Report and Recommendation. Cabbagestalk v. South Carolina, 5:16-3314-RMG-KDW, 2016 WL 7467986 (D.S.C. 2016). Applicant did not pay the fee and the matter was dismissed.

Applicant’s Other Federal Actions

Applicant has filed actions in federal court too numerous to explore in detail, and whose summation seems unnecessary to the resolution of the present action. Citing a concern about further undue delay, Respondent provided this Court a PACER Case Locator printout to demonstrate Applicant’s total 46 federal actions.

⁴ See 28 U.S.C. § 1915(g) (“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”)

II. CURRENT APPLICATION

In his second and current post-conviction relief application, notwithstanding his abusive number of filings in federal court, Applicant alleges he is being held unlawfully for the following reasons (numeration does not necessarily match that on application):

1. "U.S. District court agreed that the PCR Court 'did' unreasonably apply established federal law or make an unreasonable determination of the facts in its finding that the indictments were only notice documents and that the petitioner knew what crimes were on the indictments"
 - a. "order filed 7/01/15 ORDER U.S. District Judge Richard M. Gergel"
2. "S.C.D.C. not properly giving me my good time and gained work credits due to overturned charges and I have grievance telling them to do this but they ignore it, so I ask this Courts to force them to do it."
 - a. "Grievances tell to give all privileges back and uplift sentencing"
3. "Per Cherry v. State wasn't given my full one bite of the apple to fully defend myself for fear that PCR Court ineffective PCR Attorney Heather M. Cannon"
 - a. "letter from lawyer admitting to not fulling addressing issues which makes Heather M. Cannon ineffective"
4. "Never Indicted until this very day"
 - a. "Indictments"
5. "Motion for Reconsideration of Sentence of 18 years to 10 time served"
 - a. "Reconsider the plea agreement 10 yr plea negotiated signed off on by Solicitor"
6. "Never gave no time"

Applicant requests relief as follows:

- "To Receive 10 years plea time served uplift 18 years plea off me to have S.C.D.C. uplift sanctions of won grievance off me which damaging me credits, good time and have sentence calculated proper [illegible] inadequate system"

Applicant affirmatively refuses the assistance of counsel.

Before this Court are the Dillon County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR action, the orders dispensing with Applicant's second federal habeas petition, the orders

restricting Applicant's filings in federal court, a PACER summary of Applicant's federal actions in the District Court of South Carolina, and the records of this current PCR action.

III. 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 to -160. 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 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.

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). 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."

Applicant was pled guilty on August 28, 2007, and the remittitur from his direct appeal issued on February 25, 2010. The current application was not filed until January 8, 2016—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must also 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). 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 or his *numerous* federal petitions; 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, and the Court shall dismiss the application 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 Dillon County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 4th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dillon 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 15th day of February, 2018.



PAUL M. BURCH
Chief Administrative Judge
Fourth Judicial Circuit

Charterfield, South Carolina