

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

RECEIVED

JUN 20 2018

Honorable William H. Seals, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No.: 2015-CP-22-00847

Robert Troy Taylor,

Petitioner,

vs.

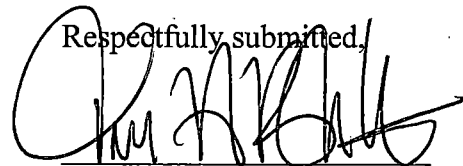
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Robert Troy Taylor, Petitioner, appeals the Final Order of Dismissal issued by the Honorable William H. Seals, Jr. on March 20, 2018, which was filed on March 26, 2018. Petitioner also appeals the Order Denying Applicant's Motion Pursuant to Rule 59(a) & (e), SCRCP issued by the Honorable William H. Seals, Jr. on May 10, 2018, which was filed on May 18, 2018. Undersigned counsel received a copy of the Order on May 25, 2018.

Respectfully submitted,



Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

June 20, 2018

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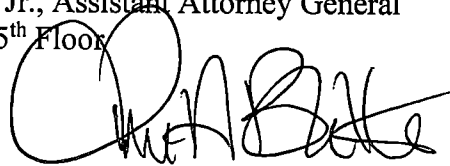
State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I hand delivered this 20th day of June 2018 a copy of the Notice of Appeal and Explanation to Johnny E. James, Jr. of the Office of the Attorney General at the following address:

Office of the Attorney General
ATT: Johnny E. James, Jr., Assistant Attorney General
1000 Assembly Street, 5th Floor
Columbia, SC 29201



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S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

June 20, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Robert Troy Taylor,
S.C.D.C. No. 315084,

) Case No.: 2015-CP-22-00847
)
)

Applicant,

FINAL ORDER OF DISMISSAL

v.

State of South Carolina

Respondent.

FILED
GEORGETOWN COUNTY SC
2018 MAR 26 AM 10:01
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed September 10, 2015. Respondent made its return on or about June 8, 2016, requesting the application be summarily dismissed as untimely, successive, and barred by *res judicata*.

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 June 20, 2016, and filed December 14, 2016, 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.

Summary of Applicant’s Responses to Conditional Order of Dismissal

Applicant filed a *pro se* response to the conditional order of dismissal on December 28, 2016, indicating he had retained counsel Tricia Blanchette, Esq., to represent him in the matter and that he needed additional time in order for counsel to file a supplemental response. Applicant argued that, upon a grant of relief in the Third Judicial Circuit of South Carolina by the Honorable Tanya A. Gee, renewed public interest in his case had led to affidavits from “key witnesses[.]” Applicant additionally pointed to affidavits from individuals “who were present

and prepared to testify at the PCR hearing but were not interviewed by PCR Counsel, weren't called to testify, and did not have an affidavit prepared before hand, [sic] and therefore, their testimonies have yet to be heard," in support of his allegation of ineffective assistance of PCR counsel. Applicant further argued that he should be entitled to a second hearing on the basis of an order denying certiorari in an unrelated case: Bing v. State, S.C. Sup. Ct. Order filed Aug. 21, 2014, App. Case No. 2013-000637 (citing Hendricks v. State, 387 S.C. 221, 692 S.E.2d 892 (2010)).¹ Finally, Applicant argued his conviction and first application for PCR constituted a miscarriage of justice due to (1) the failure of plea counsel to interview a certain witness, (2) a Brady violation by the prosecution, and (3) the failure of prior PCR counsel, Tara Dawn Shurling, Esq., to put into the record documents in Applicant's possession which purportedly tend to show a Brady violation. Applicant exhaustively argues in favor of a right to effective assistance of counsel in presenting claims of ineffective assistance of counsel.

Applicant, by and through counsel Blanchette, filed a supplemental response to the conditional order of dismissal on December 8, 2017. Therein, Applicant again argues that his plea and first PCR proceeding constitute a miscarriage of justice, and again argues newly-discovered evidence, but "concedes that the witnesses and information addressed may have been discoverable by diligent counsel, but [Applicant] reasonably relied upon retained counsel to properly prepare and investigate and these witnesses and information were not brought to light." Supplemental Response at 3. By vague reference, counsel Blanchette appears to incorporate the matters raised in Applicant's *pro se* response.

Applicant additionally provides materials from individuals Charles Harrison and Nick Everett. Mr. Harrison was not produced at the evidentiary hearing on the prior application for PCR, though prior PCR counsel questioned plea counsel regarding him. The affidavit from Mr.

¹ The Court notes that it appears counsel Blanchette represented Mr. Bing.

Harrison indicates that he has no memory of the events, concluding “with this ‘event’ happening so many years ago, I find it hard to recall these ‘events.’” An affidavit from Mr. Everett contests that Applicant was not with his group on the day the crimes occurred.

Ruling and Conclusion

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.

Despite Applicant’s vigorous and conspicuously hybrid² protestations to the contrary, ineffective assistance of post-conviction relief counsel is not a cognizable claim under the Uniform Post-Conviction Relief Act. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). 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).

Regardless, Applicant insists upon the narrow “miscarriage of justice” exception. Id., 305 S.C. at 451, 409 S.E.2d at 394. A review of the complete record before this Court gives no

² “Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.” Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); see also State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564 (1998); State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct.App. 2016) (*Pro se* filing a nullity where person was represented by counsel). Where an Applicant seeks to submit a filing through his or her attorney, counsel has an obligation to use professional judgment and review arguments offered by his or her client. Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517 (2002). “[C]ounsel may not serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation[.]” Id. The Court only considers Applicant’s response, evidently then represented by counsel Blanchette, insofar as it is incorporated and relied upon by the supplemental response to the conditional order of dismissal.

room for such consideration. Despite entering a plea of guilty to three counts, prior PCR counsel evidently argued eight different grounds for relief on Applicant's behalf:

1. Plea counsel was ineffective for failing to sufficiently advise the Applicant that a conviction for criminal sexual conduct with a minor in the second degree was a "most serious" strike and that it could be used as a predicate offense for his Williamsburg County charges.
2. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered where they were entered without the knowledge that his convictions could be used to enhance his sentence on his Williamsburg County charges.
3. Plea counsel was ineffective for failing to sufficiently investigate the factual circumstances surrounding the criminal sexual conduct charge.
4. Plea counsel was ineffective for failing to move for a continuance once he discovered the precise factual circumstance surrounding the criminal sexual conduct charge.
5. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could effectively impeach the credibility of the complaining witness on the criminal sexual conduct charge.
6. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could present an alibi defense on the criminal sexual conduct charge.
7. Plea counsel was ineffective for failing to advise the Applicant that if he did not plead guilty on April 20, 2006, he would not proceed to trial immediately on the CSC with a minor charge because he had not yet been indicted on that charge.
8. The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could have had more time to prepare for a trial on the most serious charge if he chose not to waive grand jury presentment on the criminal sexual conduct charge in Georgetown County.

Explicitly ruled upon by the prior PCR Court are precisely the allegations raised by Applicant in this action and conceded as known or knowable to Applicant at the time of his plea, let alone the time of his prior PCR hearing.


Here, Applicant received a hearing in his first PCR action and timely appealed therefrom. Applicant further enjoyed to exhaustion the federal habeas corpus procedures, including an attempt to appeal to the United States Fourth Circuit Court of Appeals. It is clear Applicant

enjoyed a complete adjudication on the merits of his original application—"one full bite at the apple." Therefore, Applicant's allegations of ineffective assistance of PCR counsel do not fall within any exception to the rule barring such claims—to the contrary, the present application falls precisely within the chief concern of the Aice Court: "[i]t is a troubling prospect indeed to us that the number of successive PCR applications to be entertained by our judicial system in a given case be limited only by the imagination and creativity of skilled attorneys." The Court will not consider review of prior PCR counsel's performance, and all other matters are such that were or could have been raised in the first application.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, as well as those reasons set forth 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 20 day of March, 2018.


WILLIAM H. SEALS, JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

Marion, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)

Robert Troy Taylor,) Case No.: 2015-CP-22-00847
S.C.D.C. No. 315084,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER DENYING APPLICANT'S MOTION
PURSUANT TO RULE 59(a) & (e), SCRCP**

This matter comes before the Court by way of Applicant's "Motion Pursuant to Rule 59(a) & (e), SCRCP" filed on April 3, 2018. Upon request by this Court, Respondent filed its return to Applicant's motion on April 27, 2018. The Court finds as follows:

FILED
2018 MAY 18 PM 3:21
ALMAY Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

I.

This matter originally came before the Court by way of an application for post-conviction relief filed September 10, 2015. Responded filed its return on June 13, 2016, requesting the application be summarily dismissed as successive, barred by *res judicata*, and as untimely under the statute of limitations.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed June 20, 2016, and filed December 14, 2016, provisionally denying and dismissing this action, while giving Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed March 20, 2018, and filed March 26, 2018, dismissing this action with prejudice.

II.


In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(a) & (e), SCRCP. This Court has thoroughly reviewed the arguments presented by Applicant in his motion, as well as those presented by Respondent in its return, as well as the orders subject to the motion. This Court agrees with Respondent that the motion must be denied.

The Court's Final Order of Dismissal and Conditional Order of Dismissal contain the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Applicant's motion raises no new arguments of law or fact that were not already presented, but only again asks for a hearing to determine if the prior PCR afforded him "one full bite of the apple." This Court thoroughly addressed that demand in its orders. Accordingly, the Court properly ruled on all issues before it, and Applicant's motion must be denied.

CONCLUSION

Based on all of the foregoing, this Court finds and concludes that Applicant has not established any reason to alter or amend its Final Order of Dismissal dated March 20, 2018, and filed March 26, 2018. Accordingly, Applicant's Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 10 day of May, 2018.


WILLIAM H. SEALS, JR.
Chief Judge for Common Pleas
Fifteenth Judicial Circuit

Marvin, South Carolina