

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Patrick Bryant, #215212

Plaintiff

v.

State Of South Carolina

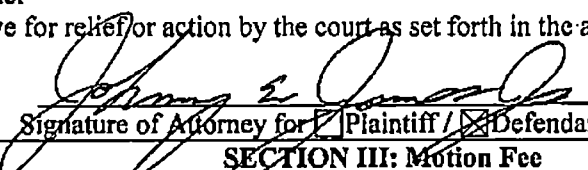
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2018-CP-22-0220

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Patrick Bryant, #215212, Bar No. Address: Perry CI 430 Oaklawn Dr. Pelzer SC 29669 phone: fax: e-mail: other:	Defendant's Attorney: Johnny E. James Jr., Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: JJames@scag.gov other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input 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 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	July 17, 2018 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <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: <u>Chinder</u>	Date Filed: <u>7/31/18</u>
<input checked="" type="checkbox"/> MOTION FEE COLLECTED: <u>0</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

FILED
 GEORGETOWN COUNTY, S.C.
 2018 JUL 31 AM 11:00
 ALPHA WHITE
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

Patrick P. Bryant,
S.C.D.C. No. 215212,

) Case No.: 2018-CP-22-00220
)
)

Applicant,

)

) **FINAL ORDER OF DISMISSAL**
)
)

v.

State of South Carolina

)
)
)

Respondent.

)
)
)

ALMA Y. WHITE
CLERK OF COURT

2018 JUL 31 AM 11:00

FILED
GEORGETOWN COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed March 5, 2018. Respondent made its return on or about June 12, 2018, requesting the application be summarily dismissed as untimely, successive and otherwise without merit as a matter of law.

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 6, 2018, and filed June 12, 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 June 27, 2018, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a response on July 9, 2018, in which Applicant argues the court lacked subject-matter jurisdiction due to his previously alleged deficiency in the indictment. This Court has reviewed Applicant's response 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.

Applicant's allegations regarding jurisdiction are without merit. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). With respect to Applicant's claims concerning the sufficiency of the indictment, Applicant was required to raise such a challenge prior to the swearing of the jury. S.C. Code Ann. §17-19-90 (2003). Regardless, "[a]n indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499. Put simply, the trial court had subject-matter jurisdiction over Applicant. Further, Applicant gives no reason why he could not have raised his allegations in a prior application for relief.

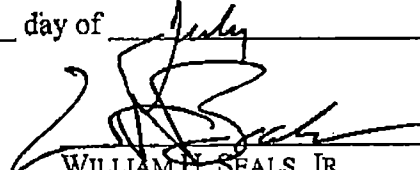
[Conclusion and signature on following page]

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 22 day of July, 2018.

Martin, South Carolina.


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



ALAN WILSON
ATTORNEY GENERAL

July 25, 2018

The Honorable Alma Y. White
Georgetown County Clerk of Court
PO Box 479
Georgetown, SC 29442-0479

Re: Patrick P. Bryant, #215212 v. State of South Carolina
2018-CP-22-0220

Dear Ms. White:

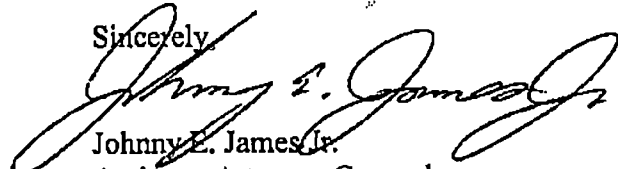
Enclosed please find the original **Final Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

Enclosure

1. Did the judge err in allowing the State to question appellant, over objection, about details of a prior conviction for criminal domestic violence of a high and aggravated nature?
2. Did the judge err in admitting in evidence, over objection, appellant's indictment for criminal domestic violence of a high and aggravated nature when the appellant was on trial for criminal sexual conduct first degree and criminal sexual conduct with a minor second degree?

By opinion decided January 21, 2010, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Bryant, Op. No. 2010-UP-006 (S.C. Ct. App. filed Jan. 21, 2010). The Remittitur was issued on February 8, 2010.

First PCR Application: 2010-CP-22-00727

Applicant filed his first application for post-conviction relief on May 4, 2010 (2010-CP-22-00727). He alleged the following grounds for relief in his application, as previously summarized by Respondent:

1. Ineffective assistance of trial counsel:
 - a. Failure to investigate and object to improper testimony of Crystal Smith regarding a prior CDVHAN conviction;
 - b. Failure to timely object to the indictment where the State obtained the indictment through perjury and prosecutorial misconduct (no general sessions term convened on the date of the indictment); and
2. Conflict of interest: counsel previously represented Applicant in 2005 on a charge of CDVHAN; the CDVHAN conviction was overturned in February 2010 pursuant to a PCR filed in May 2009.

Respondent made its return on June 21, 2010, and an evidentiary hearing into the matter was convened on November 16, 2010, before the Honorable Steven H. John. Applicant was present at the hearing and represented by Paul Archer, Esq. Christina Catoe, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and J. Eric Fox, Esq., also testified. By written order dated December 2, 2010, and filed December 9, 2010, Judge John denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Tristan M. Shaffer, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina denied Applicant's petition by unpublished opinion and granted counsel's request to withdraw. Bryant v. State, S.C. Sup. Ct. Order filed August 23, 2012. The Remittitur was issued on September 11, 2012.

Second PCR Application: 2011-CP-22-00897

Applicant filed his second application for post-conviction relief on July 12, 2011 (2011-CP-22-00897). He alleged the following grounds for relief in his application, as previously summarized by Respondent:

1. Was not indicted by grand jury – the grand jury's schedule reflects that it did not convene on the day that is indicated on the indictment;
2. PCR attorney ineffective for failing to bring matter to the attention of the court.

Respondent made its return and motion to dismiss on August 10, 2011, arguing the application was successive, untimely, and without merit as a matter of law. On April 4, 2012, the Honorable Steven H. John issued a Conditional Order of Dismissal, and then a Final Order on September 19, 2012, dismissing the matter with prejudice.

Applicant filed a timely notice of appeal. By order dated December 12, 2012, the Supreme Court of South Carolina dismissed the appeal for failure to show an arguable basis for appeal as required by Rule 243(c), SCACR. Bryant v. State, S.C. Sup. Ct. Order filed Dec. 12, 2012. The Remittitur was issued on December 31, 2012.

Federal Habeas Petition: 8:13-316-RMG-JDA

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on February 2, 2013 (C.A. No. 8:13-316-RMG-JDA). In his Petition, Applicant set forth the following grounds for relief:

1. "The [P]etitioner's conviction is in violation of the U.S. Const. and laws and treaties of U.S."
 - a. "Respondents violated the [P]etitioner's 4, 5, 6, and 14th Amendment of U.S. Const."
2. "The Court lacked subject matter jurisdiction over the [P]etitioner in this matter."
 - a. "Was not indicted by a legal grand jury."
3. "The PCR judge went contrary to the U.S. Supreme Court precedent and applied a legal context that should not apply and his decision was objectively unreasonable."
 - a. "See PCR order attached/PCR attorney ineffective/Martinez v. Ryan, 132 S.Ct. 1309."
4. "The S.C. Supreme Court made an unreasonable application of the U.S. Supreme Court precedent."
 - a. "See Supreme Court's Order."

Respondent filed its Return and Motion for Summary Judgment on May 6, 2013. The Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued on December 3, 2013, a Report and Recommendation that Respondent's motion for summary judgment be granted. Bryant v. Cartledge, 8:13-316-RMG-JDA, 2014 WL 108354 (D.S.C. 2014) (as incorporated in district court order). Applicant timely objected. The Honorable Richard Mark Gergel, United States District Judge, denied Applicant's Petition on January 9, 2014, and accepted the Report and Recommendation for summary judgment. Id. Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals, which dismissed Applicant's appeal on June 3, 2014, for want of a certificate of appealability. Bryant v. Cartledge, 574 Fed.Appx. 272 (4th Cir. 2014).

II. CURRENT APPLICATION

In his third and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons, excerpted in part from Applicant's memorandum in support of relief:

1. "The applicant's sentence has exceeded the maximum authorized by South Carolina Statutory Law and has expired."

- a. "Prior to his [trial], the state served a 'Notice' to seek a life sentence upon his conviction for his CSC, first degree offense. The jury subsequently found the applicant "not guilty" on his CSC first degree offense, but did find him guilty on his CS second degree offense. Consequently, Judge Baxley sentenced him to life without parole pursuant to the state's 'notice'."
 - b. "The applicant accordingly submits that inasmuch as the state never served him any 'notice' to seek his life sentence upon his CSC second degree conviction."
2. "The applicant's conviction and life sentence is in violation of the double jeopardy clauses of the U.S. and State Constitutions."
 - a. "The applicant accordingly contends that since the jury found him not guilty of his CSC first degree offense with the fifteen (15) year old minor victim, [. . .] which allegedly occurred at the same time and location as his CSC first degree offense (05-GS-22-753), his CSC second degree conviction subjected him to a jeopardy barred conviction which should entitle him to PCR relief. See Blockburger v. U.S., 284 U.S. 299; 301 (1932)."

Before this Court are the Georgetown County Clerk of Court records regarding the subject convictions, including two notices of intent to seek LWOP; Applicant's records from the South Carolina Department of Corrections; the opinions of the Court from each of Applicant's prior appeals; the final orders of Applicant's previous PCR and federal habeas actions; 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 convicted on July 26, 2007, and the remittitur from his direct appeal issued on February 8, 2010. The current application was not filed until March 5, 2018—well after the one-year statutory filing period expired. Therefore, the Court shall summarily dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must 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 applications 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 applications 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.

Direct Appeal Issues

Applicant alleges two claims of error on the part of the trial court. The Court finds the application must therefore be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State,

326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegations could have been raised at trial and thereafter on appeal. Therefore, the Court shall dismiss the application for raising claims not cognizable under the Uniform Post-Conviction Procedure Act.

Notice of Intent to Seek LWOP Was Properly Filed

The Court finds Applicant's assertion that the State failed to file a notice of intent to seek a sentence of life-without-parole pursuant to § 17-25-45(A) is demonstrably false. Notice was filed in 2007-GS-22-00667 on July 2, 2007, as evidenced by the clocked copy in the Clerk of Court's records. As such, Applicant's first allegation is entirely without merit and shall be summarily dismissed.

Double Jeopardy

The Court finds Applicant's assertion that his conviction for criminal sexual conduct with a minor, second degree, subjects him to double jeopardy in light of his concurrent acquittal for criminal sexual conduct, first degree, is without merit as a matter of law. "When a single act combines the requisite ingredients of two distinct offenses, the defendant may be severally indicted and punished for each." State v. Norton, 286 S.C. 95, 96, 332 S.E.2d 531, 532 (1985) (quoting State v. Hall, 280 S.C. 74, 310 S.E.2d 429, 431 (1983)). "The test to be applied to determine whether there are two offenses or one growing out of the same act or transaction is whether each statute requires proof of a fact which the other does not." Id. (citing Blockburger v. U.S., 284 U.S. 299 (1932)). CSC with a minor, second degree requires proof of the victim's age not required to show CSC, first degree; CSC, first degree requires proof of use of aggravated force, forcible confinement, or non-consensual incapacitation by way of some intoxicating substance not required to show CSC with a minor, second degree. See also State v. Munn, 292 S.C. 497, 499, 357 S.E.2d 461, 462 (1987) (finding CSC with a minor, second degree, is not a

lesser-included offense of CSC, second degree, for essentially the same reasoning). Applicant was not subject to double jeopardy by his conviction for CSC with a minor, second degree; therefore, his second allegation is entirely without merit as a matter of law and shall be summarily dismissed.


IV. 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 Georgetown 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 – 15th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Georgetown 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 6 day of June, 2018.



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

Mauri, South Carolina