

MAC | VANCE ATTORNEYS, LLC

January 30, 2019

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FEB 01 2019

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Adrian K. Neal, #351553 v. State of South Carolina
2018-CP-24-00267

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Neal.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Adrian K. Neal
Janell H. Gregory, Asst. Attorney General
Greenwood County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 01 2019

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2018-CP-24-00267

Adrian K. Neal, #351553, Petitioner,

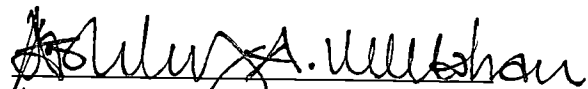
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Adrian K. Neal, appeals the order of the Honorable Donald B. Hocker, filed December 14, 2018, and received by the Applicant on January 29, 2019. (Please see attached email from Clerk of Court.)

Jan. 30th, 2019



ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

Opposing Counsel:
Janell H. Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

FEB 01 2019

The Honorable Donald B. Hocker, Circuit Court Judge S.C. SUPREME COURT

Case No. 2018-CP-24-00267

Adrian K. Neal, #351553, Petitioner,

v.

State of South Carolina, Respondent.

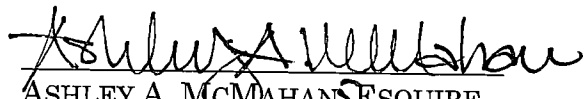
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Janell H. Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Jan 30th, 2019


ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110



Ashley McMahan <ashley@macvance.com>

Adrian Neal

Karen Heery <kheery@greenwoodsc.gov>
To: Ashley McMahan <ashley@macvance.com>

Tue, Jan 29, 2019 at 9:40 AM

Here ya go!!

On Mon, Jan 28, 2019 at 10:26 AM Ashley McMahan <ashley@macvance.com> wrote:
[Quoted text hidden]

[Quoted text hidden]

 **image0539.pdf**
329K

10 Be Treated
as Original (DJA)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
)
)
Adrian Keith Neal, #351553,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00267

ORDER OF DISMISSAL

Filed DP 8th Jud Cir Greenwood, SC
2018 DEC 14 PM 4:44

This matter comes before the Court by way of an application for post-conviction relief filed March 27, 2018.

I. Procedural History

Adrian Keith Neal (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. In January 2012, the Greenwood County Grand Jury indicted Applicant for murder (2012-GS-24-0134). The charge stemmed from an incident on September 19, 2011, when Applicant and the mother of his child got into a verbal argument while riding in a car with their two-year-old child and Applicant brandished a firearm and fatally shot the victim twice. Public Defender Janna Nelson of the Greenwood County Public Defender's Office represented Applicant. Deputy Solicitor Andrew Hodges of the Eight Circuit Solicitor's Office prosecuted the case.

On July 16, 2012, Applicant appeared before the Honorable D. Garrison Hill, where he pled guilty as indicted. Pursuant to negotiations between the State and Applicant, Judge Hill sentenced Applicant to imprisonment for thirty years. Applicant did not appeal his conviction or sentence.

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DJA

2013-CP-24-0594

Applicant subsequently filed an application for post-conviction relief on June 21, 2013, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to petition the court of mental evaluation"
 - b. "[F]or failure to advise the Applicant of his rights to appeal"

Respondent filed its return on March 27, 2014. An evidentiary hearing into the matter was convened on October 17, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On November 8, 2017, the Honorable R. Ferrell Cothran, Jr., issued the order of dismissal denying Applicant's application for post-conviction relief. Applicant did not appeal.

II. Allegations Raised and Relief Sought

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

1. "Plea was not voluntary and intelligently made to the Court"
 - a. "Plea was made in violation of Rule 11, FRCP."
2. "Austin v State appeal"
 - a. "PCR counsel did not file an appeal from PCR"

As requested relief, Applicant has asked for "sentence modification to twenty year or new plea hearing"

Respondent filed its Return and Motion to Dismiss June 13, 2018, seeking summary dismissal of all claims beyond Applicant's request for a belated appeal. On November 1, 2018, Applicant served an Amended Return and Motion to Dismiss consenting to the request for a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

This Court had before it the records of the Greenwood County Clerk of Court regarding

the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, records and filings from Applicant's initial post-conviction relief action, affidavit from Laura Saunders, and the current application.

III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. §17-27-80 (1985), the Court makes the following findings of fact and conclusions of law:

Failure to Comply with Statute of Limitations

This Court finds Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. With respect to his allegation his guilty plea was involuntary. 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 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."

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Applicant pled guilty on July 16, 2012. Any post-conviction relief action regarding his guilty plea was therefore due to be filed on or before on July 17, 2013. This application was filed on March 27, 2018, well beyond the statutory filing period. Therefore, this Court finds Applicant failed to file this post-conviction application within the statutory time mandated by the Uniform Post-Conviction Procedure Act and therefore this claim must be dismissed.

Successiveness

This Court finds Applicant's claim regarding his guilty plea must be summarily dismissed as successive to Applicant's previous 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. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in

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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).

This Court finds Applicant could have raised this claim of an involuntary guilty plea as grounds for relief in his prior post-conviction relief application. Raised now, this claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore this Court finds this claim must be dismissed.

Belated Appeal

This Court finds Applicant's allegation that he is entitled to a belated appellate review of his initial post-conviction relief action due to his prior post-conviction relief attorney's failure to perfect an appeal on his behalf is meritorious. Where a post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his initial post-conviction relief application.

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IV. Conclusion

All allegations except the belated appeal pursuant to Austin are barred as outside the statute of limitations and successive. Applicant has proven by a preponderance of evidence that he did not knowingly and voluntarily waive the direct appeal of the denial of his first post-conviction relief action. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.

IT IS THEREFORE ORDERED THAT:

1. Applicant is granted the right to seek a belated appellate review of case 2013-CP-24-0594 pursuant to Austin v. State; and
2. Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate appellate review of Applicant's first post-conviction relief action.
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th day of November, 2018.



DONALD B. HOCKER
Chief Administrative Judge
Eighth Judicial Circuit

Lawrence, South Carolina.





MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC
29171

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

