

cc
AG
AT
GS
SDL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Timothy Cain Wilson,
Petitioner,

Case No: 2018-CP-10-2408

v.

State of South Carolina,
Respondent

RECEIVED

ORDER OF DISMISSAL

FEB 28 2019

SC Court of Appeals

FILED
2019 FEB -5 PM 2:53
JULIE J. ARMS IRONG
CLERK OF COURT

This matter comes before the Court by way of a petition for writ of habeas corpus filed by Timothy Cain Wilson (Petitioner) on May 11, 2018. Respondent made its Return, requesting the petition be summarily dismissed.

PROCEDURAL HISTORY

Applicant is not presently confined in the South Carolina Department of Corrections. In March 1999, the Charleston County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (1999-GS-10-1788), lewd act upon a minor (1999-GS-10-1789), and first degree criminal sexual conduct with a minor (1999-GS-10-1790). C. Andrew Carroll, Esquire represented Applicant. On October 26, 1999, Applicant pleaded guilty as indicted to all charges before the Honorable Victor Rawl. Judge Rawl sentenced Applicant to imprisonment for concurrent terms of ten years each for second degree criminal sexual conduct with a minor and lewd act upon a minor and twenty years for first degree criminal sexual conduct with a minor, along with credit for time served of 335 days. Applicant did not appeal his conviction or sentence.

Applicant submitted a state habeas corpus petition (2008-CP-10-5411) dated September 23, 2008. After response from the Office of the South Carolina Attorney General and a report issued by the magistrate, the Petition was denied by Order issued February 3, 2009. Applicant appealed the order of dismissal on April 7, 2010. On May 25, 2010, the South Carolina Court of

Appeals dismissed the appeal due to Applicant's failure to timely serve the notice of appeal. On June 4, 2010, the Applicant filed a motion for reinstatement to proceed in writ of certiorari. The South Carolina Supreme Court denied this motion on July 22, 2010. Applicant then filed a motion for refile to proceed in writ of certiorari, which was denied by the South Carolina Supreme Court. The remittitur was sent on December 13, 2010.

Applicant submitted a second state habeas corpus petition (2010-CP-10-) dated

CURRENT STATE HABEAS PETITION FILED IN COMMON PLEAS

In his current petition for habeas corpus¹, Petitioner alleges that he is being held in custody unlawfully "due to the petitioner's defect of understanding and ignorances of the inculpatory fact, a statement and plea was giving, voluntarily and ignorantly... the petitioner is asking that this honorable court to remove or withdraw the statement and plea that was voluntarily, and that this court would view all the evidence that support these charges in each indictment by the burden of proof. The petitioner contains that his statement was written out of ignorances, and his pleaded out of fear and a mistake." Petitioner is also alleging that double jeopardy took place.

Before this Court the records of the Charleston County Clerk of Court regarding the subject convictions, Petitioner's records from the South Carolina Department of Corrections, Petitioner's records from his prior Habeas Corpus petitions, and his current application petition.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Court of Common Pleas lacks subject matter jurisdiction as to this petition for habeas corpus and therefore, this petition must be dismissed pursuant to Rule 12(b)(1). Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. However, a state habeas petition must be filed in the original

¹ Applicant filed a post-conviction relief application (2018-CP-10-2234) on April 30, 2018 and is currently pending.

jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)². Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct. App. 2002) (citing State v. Brown, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. Id. (citing State v. Brown, 343 S.C. 342, 346, 540 S.E.2d 846, 848 (2001)). “The acts of a court with respect to a matter as to which it has no jurisdiction are void.” Id.

Moreover, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a [post-conviction relief] action.” Keeler, 330 S.C. 568, 500 S.E.2d 123. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act may not be raised by a petition for a writ of habeas corpus before the circuit or lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 329 S.C. 37, 495 S.E.2d 426. A petitioner may allege constitutional violations in post-conviction relief proceedings, unless the issue could have been raised on direct appeal. Id.; Keeler 330 S.C. 568, 500 S.E.2d 123.

A habeas corpus petition must support the requested relief. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition

² Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation “which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

are to be treated as true, a petitioner must make out a *prima facie* case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 329 S.C. 37, 495 S.E.2d 426.

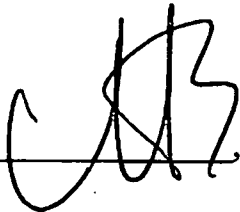
To warrant a hearing, the petition must include two specific allegations. First, the petition must allege the petitioner has exhausted all available post-conviction relief remedies. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter, 316 S.C. 104, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 329 S.C. 37, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as post-conviction relief, are unavailable or inadequate. Gibson, 329 S.C. 37, 495 S.E.2d 426.

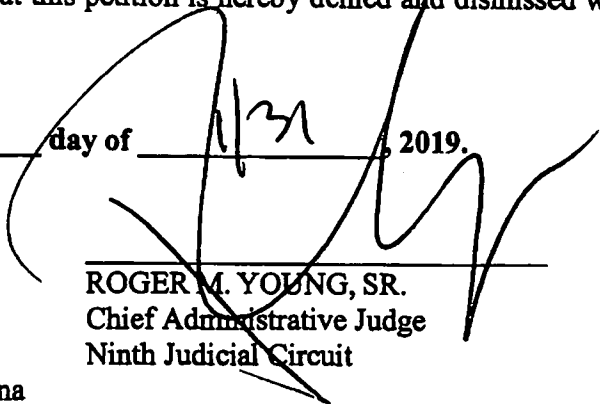
This Court finds the Petition must be dismissed because it is procedurally barred, leaving this Court without jurisdiction. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in an application for post-conviction relief. The Petition wholly fails to meet the standards required for the issuance of this extraordinary writ. Petitioner provides no reason as to why his allegations could not have been raised in an application for post-conviction relief. Because the Petition is procedurally barred, the only remaining form of relief is left to the South Carolina Supreme Court under its original jurisdiction, leaving this Court without jurisdiction. The failure to file this action in the proper venue requires dismissal of the action for lack of subject matter jurisdiction. Thus, these claims cannot be raised in a petition for habeas corpus in the Circuit Courts of South Carolina. Accordingly, this Court finds this Petition must be summarily dismissed.

CONCLUSION

IT IS THEREFORE ORDERED that this petition is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this _____ day of 1/31, 2019.

 South Carolina


ROGER M. YOUNG, SR.
Chief Administrative Judge
Ninth Judicial Circuit