

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Curtis Price, #303786

Petitioner,

v.

State of South Carolina

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)
)
) Case No.: 2018-CP-27-0261
)
)
) **ORDER DISMISSING**
) **"PETITION FOR WRIT OF HABEAS**
) **CORPUS"**
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This matter comes before the Court pursuant to the filing of a document entitled "Writ of Habeas Corpus" on May 17, 2018, by Curtis Price ("Petitioner"). Respondent made its Return on January 4, 2019, moving to deny and dismiss the petition without prejudice to the filing of an action in the original jurisdiction of the South Carolina Supreme Court. This Court finds that it does not have subject matter jurisdiction to hear this matter, pursuant to Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) (holding that any "matter which is cognizable under the Uniform Post-Conviction Procedure Act may not be raised by petition for writ of habeas corpus before circuit or other lower courts) and Section 17-27-20. Because Petitioner's previous PCR actions were dismissed and this Court lacks subject matter jurisdiction to hear this matter, Petitioner's Petition for Habeas Corpus is respectfully DENIED.

PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted at the December 2003 term of General Sessions for the Greenville County Grand Jury for armed robbery (2003-GS-23-9166, count 1), and possession of a weapon during the commission of a

violent crime (2003-GS-23-9166, count 2). Ernest Hamilton, Esquire, represented him at trial. Applicant proceeded to a trial before the Honorable C. Victor Pyle, Jr. Petitioner was convicted of both charges and sentenced on July 23, 2004, to consecutive terms of imprisonment for thirty years for armed robbery and five years for possession of a weapon during the commission of a violent crime.

Petitioner filed a timely notice of appeal. Eleanor Duffy Cleary, Esquire, of the South Carolina Office of Appellate Defense, filed a brief on behalf of Petitioner pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal and granted counsel's motion to withdraw. State v. Price, Op. No. 2007-UP-057 (Ct. App. filed February 8, 2007).

A. First PCR Action – 2007-CP-23-8018

Petitioner filed his first application for post-conviction relief (PCR) on November 29, 2007 (2007-CP-23-8018). Petitioner raised the following issues in his first PCR:

1. Ineffective assistance of counsel.
2. Constitutional violations.
3. Prosecutorial misconduct.

At the evidentiary hearing, Petitioner proceeded on the following allegations:

1. Ineffective assistance of trial counsel
 - A. Failed to move to suppress admission of several exhibits
 - B. Failed to object to Clapp's testimony
 - C. Failed to object to several points in State's closing argument
 - D. Lack of preparation

The State made its Return on February 22, 2008. An evidentiary hearing was convened on February 25, 2009, at the Greenville County Courthouse before the Honorable John C. Few. Petitioner was present and represented by Caroline M. Horlbeck, Esquire. The State was represented by Karen C. Ratigan, Esquire. Petitioner indicated he wanted to relieve counsel and

continue the case to the next term. The Court denied the motion to relieve counsel and continued the case to the following day, where a full evidentiary hearing was held. Judge Few denied and dismissed the application with prejudice by written order dated November 13, 2009, and filed November 16, 2009.

Petitioner subsequently filed a notice of appeal from the denial of his application. On July 22, 2010, Appellate Defender Robert M. Pachak filed a petition for writ of certiorari on Petitioner's behalf pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The petition was denied on October 20, 2011, and counsel's motion to withdraw was granted. The remittitur was issued November 8, 2011.

B. Second PCR Action – 2012-CP-23-1286

Petitioner filed a second application for PCR on February 20, 2012 (2012-CP-23-1286). In that application, Petitioner alleged he received ineffective assistance of PCR counsel in that PCR Counsel failed to effectively represent him, and Petitioner also alleged Trial Counsel failed to object to jury instructions. The State moved to dismiss the application as untimely and successive. The Court issued a Conditional Order of Dismissal on July 25, 2012, provisionally denying and dismissing the action, while giving Petitioner twenty days from the date of service to show why the order should not become final. On August 28, 2012, Petitioner amended the application to include the allegation of ineffective assistance of PCR counsel. The Court found Petitioner's application to be untimely and successive, and issued a Final Order of Dismissal signed September 22, 2012, and filed October 8, 2012. Petitioner filed a notice of appeal, but the appeal was dismissed for failure to show an arguable basis for appeal on February 12, 2013. The remittitur was issued March 6, 2013.

Current Petition for Writ of Habeas Corpus

In his current *pro se* "Petition for Habeas Corpus" Petitioner alleges he is being held unlawfully for the following reasons:

1. "The Court lacked jurisdiction to hear petitioner trial when the indictment failed to list what subsection of 16-11-330, statute petitioner violated"
2. "Petitioner sentence was unconstitutionally applied violating due process when using a state statutory scheme that was ambiguous and conflicting"

"Petitioner contend he was denied the request for credit he served prior to trial, pursuant to section 24-13-40 of the South Carolina Code (2007)

APPLICABLE LAW

The current matter is before the Court on Petitioner's Petition for writ of habeas corpus, which was filed in the Court of Common Pleas in Jasper County circuit court. The court of appeals stated in Keeler v. Mauney that "[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 PCR application. Furthermore if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court." 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998) (citing S.C. Const. Art. V, § 5).

Because Petitioner has previously exhausted all PCR remedies and alleges no new factual or legal assertions which would properly bring this matter before this Court, the circuit court of Jasper County has no subject matter jurisdiction to hear this matter. The South Carolina Supreme Court has not entered an order accepting jurisdiction of the case in its original jurisdiction nor referred it to any circuit judge pursuant to its original jurisdiction for fact finding or legal conclusions.

The availability of habeas corpus has been severely limited by the Uniform Post-conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to 17-27-120. First, “The Act ‘takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.’” Gibson v. State, 329 S.C. 37, 40-41, 495 S.E.2d 426, 428 (1998) (quoting S.C. Code Ann. § 17-17-20(b)). The Act therefore supersedes and encompasses the prior habeas corpus procedure provided by statute before the PCR Act was enacted. See S.C. Code Ann. §§ 17-17-10 to 17-17-200).

The claims made in the present petition could have been previously raised in earlier PCR applications. As the procedural history reflects, if these same claims had been brought under the Uniform Post-conviction Procedure act, each would have been barred as untimely and successive pursuant to § 17-27-45 and Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991) (“Any new ground raised in a subsequent application is limited to those grounds that ‘could not have been raised ... in the previous application’”). If the petitioner could have raised these grounds in a previous application, he may not raise them in a successive application. Id.

Petitioner cannot file this petition in the circuit court. Therefore, his current claims cannot be raised in a petition for writ of habeas corpus in this court. Under Art. 4, § 5 of the South Carolina Constitution, the South Carolina Supreme Court retains the ability to entertain writs of habeas corpus in their original jurisdiction and grant relief in those unusual instances where “there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990); see also Simmons v. State, 322 S.C. 49, 471 S.E.2d 356 (1991) (finding that the Supreme Court


will exercise its original jurisdiction where there is an extraordinary reason such as a question or significant public interest or in an emergency).

CONCLUSION

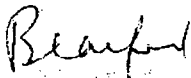
Based on the foregoing, the Court finds that it does not have jurisdiction to hear Petitioner's request for writ of habeas corpus. Therefore, this Petition for Writ of Habeas Corpus is hereby DENIED and dismissed without prejudice to the filing of this action in the original jurisdiction of the South Carolina Supreme Court.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is hereby denied and dismissed without prejudice to the filing of an action in the original jurisdiction of the South Carolina Supreme Court. It is for that Court, not the Circuit Court, to determine whether Petitioner has made or ultimately proven "there has been a violation which, *in the setting*, constitutes a denial of a fundamental fairness shocking to the universal sense of justice." Petitioner must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20 day of May 2019.



CARMEN T. MULLEN
Chief Administrative Judge
Fourteenth Judicial Circuit



South Carolina