

James Anthony Primus 252315
Mac Dougall Correctional Institution
Birch Unit 2 C 13 B
1516 Old Gilliard Road
Ridgeville S.C. 29472
August 20 2019

S.C. Supreme Court
MR Daniel Shearouse
P.O. Box 11330
Columbia S.C. 29201

RECEIVED

AUG 26 2019

S.C. SUPREME COURT

Dear Honorable Clerk

Please find enclosed Petitioner motion For Reconsideration
to be filed with your office
I would like to thank you in advanced

Sincerely

James Anthony Primus

The Supreme Court of South Carolina

James Anthony Primus Petitioner

v.

STATE OF South Carolina Respondent

Appellate Case No. 2019 - 000961

RECEIVED

AUG 26 2019

S.C. SUPREME COURT

MOTION For Reconsideration

535 S.E.2d 152 - 162 (Unanimous Decision
(S.C. Court of Appeals Remand for a new trial)

564 S.E.2d 103 - 110 overwhelming - evidence
(S.C. Supreme Court Reverse S.C. Court of Appeals)

Sentence sheet was changed to inaccurately
reflect Petitioner Pled Guilty (see exhibits)

Justiciable Controversy - is a real and substantial
controversy which is ripe and appropriate for judicial
determination as distinguish from a contingent hypothetical
or abstract dispute S.C. Court of Appeals Holden v. Cribb

561 S.E.2d 634 S.C. Supreme Court Colleton County

Taxpayers Association v School District of Colleton

County 638 S.E.2d 685

Tracy vs Tracy 682 S.E.2d

Respectfully Submitted
James Anthony Primus Prose 252315
1516 Old Gilliard Rd
Ridgewood, SC 29477

14

August 20 2019

^c Benjamin Hunter Limbaugh

252315 James Anthony Primus
MacDougal Correctional Inst
Birch Unit 2 C 13 B
1516 Old Gilliard Rd
Ridgeville S.C. 29472
7-12-2019

CPI Carroll
Dorchester County Detention Center
220 Hodge Rd
Summerville S.C. 29483

Dear CPI Carroll

I receive your explanation on the
Cocaine charge and I have one more
question as you know I went to
trial on August 31 1997 ~ Sept 1 1997
and I pled not Guilty However this
Sentence sheet state I pled Guilty
Can you explain how this happen?

Sincerely
James Anthony Primus

DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE
220 Hodge Road
Summerville, SC 29483
Office (843) 563-0259
Fax (843) 563-0263



SHERIFF L.C. KNIGHT

Mr. Primus,

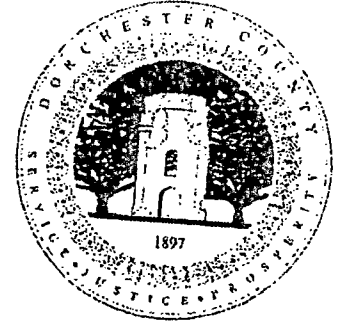
Your sentencing sheet does not state that you plead guilty. It only states that you made *A* plea. Regardless of the plea you made, you were still convicted of the charge in question. I say this to explain the check marks on your sentencing sheet. On the right where it states SENTENCE: PLEA / TRIAL, You made a plea of not-guilty, so PLEA is checked. Underneath it states: in disposition of the said indictment comes now the defendant who was "CONVICTED OF". In this sentence, "CONVICTED OF" is checked instead of "PLEADS" because you said you were NOT GUILTY but were convicted of the said charge. If you had pleaded GUILTY to the charge in question or pleaded GUILTY to a lesser charge, then it would state: defendant who was PLEAD TO..... I hope this answers your question. Please let us know if you need any further assistance.

Cpl Carroll

Cpl Carroll

DCDC Records

DORCHESTER COUNTY CLERK OF COURT
Cheryl Graham, Clerk of Court
5200 East Jim Bilton Blvd.
St. George, SC 29477



To: James Primus
From: Dorchester County Clerk of Court
Date: 6/11/14
RE:

Please find the enclosed copy or copies of requested indicated information concerning your case.

- Sentencing Sheet(s) Amended
- Warrant(s)
- Ticket(s)
- Indictment(s)
- Contact the Magistrates Court or Arresting Agency Concerning your Request
- Jail Time Served in Dorchester County - Contact: Dorchester County Sheriff Department, 100 Sears Street, St. George, SC 29477. Any other location where jail time was served Contact: The South Carolina Department of Corrections where you were located.
- Transcript(s): Contact the Court Reporter by mail.
- PCR Form
- Hold/Detainer contact caseworker, attorney or arresting agency. Contact the Family Court where your Divorce Case was heard or where you plan to have it heard.
- Contact Probation, Parole & Pardon Office
- Information not available in the Clerk of Court's Office
- Other: you did not sign your sentence sheet because it was a trial. If you had plead, you would have signed it.

St. George: 563-0160 or 832-0160 (outside St. George area)

Fax: 563-0178 or 832-0178

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS

#252315
Stable

CERTIFIED COPY 97 INDICTMENT/CASE #: -GS- 18 - 1045

STATE VS.

2014 JUN 11 AM 11:37

James A. Primm
AKA _____
Race: B Sex: M
DOB: _____ Age: _____
SSN: _____
DL#: _____
SID#: _____
CLERK OF COURT
DORCHESTER COUNTY

A/W#: E 091778
Date of Offense: 7-13-97
S.C. CODE §: 16-3-652
CDR Code #: 113

SENTENCE
~~Waiver~~ TRIAL 6-11-14

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Assault & Battery of a High and Aggravated Nature in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 113

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury
The plea is: Without Negotiations or Recommendation Negotiated Sentence
 Recommendation by the State

ATTEST:

Margaret Anne Grace
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, or Under Youthful Offender Act for a term of 10 days/months/years and/or to pay a fine of \$ _____ provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance suspended with probation for _____ months/years.

CONCURRENT or CONSECUTIVE to sentence on: 97-GS-18-1046

SPECIAL CONDITIONS:
 RESTITUTION Heard, Waived, Ordered PTUP
Total: \$ _____
Pay Terms: _____
Recipient: _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc Rehab. or Job Corps
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 Other: Credit for jail term since July 15, 1997
 Other: _____

*Fine _____ \$ _____
§14-1-206 - Assessments 100% _____ \$ _____
§14-1-211 - Surcharge _____ \$ 100.00
(Exceptions: See §14-1-211)
§56-5-2995 (DUI) _____ \$ _____
TOTAL _____ \$ 100.00

Deal George
Clerk of Court/Deputy Clerk
Court Reporter: R Keil

PRESIDING JUDGE
Sentence Date: 9-1-98
Judge Code: 090

FILED-RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

2018 NOV 19 AM 11:38

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

James Anthony Primus, #252315,

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2018-CP-18-0604

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by James Anthony Primus (Applicant) on April 2, 2018. Respondent made its Return, requesting the application be summarily dismissed as untimely and successive to Applicant's prior PCR actions.

PROCEDURAL HISTORY

Applicant is currently incarcerated pursuant to the orders of the Dorchester County Clerk of Court. Applicant was true bill indicted during the September 1997 term of the Dorchester County Grand Jury for criminal sexual conduct, first-degree (1997-GS-18-1045) and kidnapping (1997-GS-18-1046). William Runyon, Esquire, represented Applicant. Applicant proceeded to a jury trial and the jury convicted Applicant of kidnapping, but ~~Applicant also pled guilty to assault & battery of a high and aggravated nature ("ABHAN").~~ On September 1, 1998, the Honorable Luke N. Brown, Jr. sentenced Applicant to ten years of consecutive imprisonment for ~~thirty years for kidnapping and ten years for ABHAN.~~

A timely notice of appeal was filed on Applicant's behalf in the South Carolina Court of Appeals. Katherine Link, Esquire, represented Applicant and perfected an appeal on Applicant's

behalf. On July 10, 2000, the Court of Appeals reversed Applicant's convictions. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000). The State appealed the Court of Appeals decision to the South Carolina Supreme Court. The Supreme Court granted certiorari. On May 20, 2002, the Supreme Court affirmed in part and reversed in part, upholding Applicant's convictions and sentences. State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002). The remittitur was returned on June 5, 2002.

2002-CP-18-1066

Applicant thereafter filed an initial application for post-conviction relief on July 11, 2002 (2002-CP-18-1066). In that application, Applicant alleged he was being held in custody unlawfully for ineffective assistance of counsel. Respondent filed a return and an evidentiary hearing into the matter was convened on August 2 and 4, 2004, at the Orangeburg County Courthouse before the Honorable James C. Williams, Jr. Applicant was present at the hearing and represented by Kenneth Gary Cooper, Esquire. Judge Williams denied Applicant's application for post-conviction relief by order on December 21, 2004.

Applicant subsequently filed a petition for writ of certiorari. Wanda Carter, Esquire, represented Applicant and filed a Johnson Petition. On April 4, 2007, the Court of Appeals denied Applicant's petition and the matter was remitted to the lower court on April 24, 2007.

4:07-2652-PMD-TER

Thereafter, Applicant filed a federal habeas corpus petition on August 2, 2007. The Honorable Thomas E. Rogers issued a report and recommendation in which he recommended the State's motion for summary judgment be granted and Applicant's petition be denied without an evidentiary hearing on February 27, 2008. The Honorable Patrick Michael Duffy granted the State's motion for summary judgment by order filed May 27, 2008.

2013-CP-18-0382

Applicant filed another application for PCR on March 4, 2013, in which he alleged the following grounds for relief:

1. "Ex post facto violation."
2. "Applicant's plea was not freely and voluntarily given."
3. "After Discovered Evidence"
4. "Therefore as a practical matter allegations that Applicant represented by counsel did not enter a guilty plea the plea is involuntary."
5. "The court found that plea cannot be consider knowing and voluntary if a defendant lacks knowledge of a guilty plea."
6. "The Due Process clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently."
7. The South Carolina Supreme Court requires that a defendant entering a guilty plea be made aware of the nature and crucial elements of the offense."
8. "Allegations that raise questions of fact not conclusively refuted by the record require an evidentiary hearing be convened."
9. "Rarest of exceptions when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice."

Respondent made its return on September 17, 2013, requesting the application be summarily dismissed. This court issued a Conditional Order of Dismissal, signed September 23, 2013, and filed October 4, 2013, provisionally dismissing Applicant's application while giving him twenty days from the date of service to show why the order should not become final. Applicant filed numerous documents in response, which were addressed in a final order of dismissal issued by this Court on November 20, 2013, and filed November 27, 2013, denying and dismissing the application with prejudice.

Applicant subsequently filed a "motion to alter or amend the judgment" on December 16, 2013. Respondent made its return on March 28, 2014. This Court denied Applicant's motion to alter or amend by order filed May 14, 2014. Applicant subsequently filed a pro se notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal and motion for reconsideration on August 6, 2014. The remittitur was issued August 22, 2014.

4:14-3015-JFA-TER

Applicant filed another petition for writ of habeas corpus under 28 U.S.C. § 2254 on July 28, 2014, including allegations made in his earlier PCR application. On September 16, 2014, the Honorable Thomas E. Rogers, III, issued the Report and Recommendation that Applicant's petition be dismissed with prejudice as successive and unauthorized. Applicant filed his objection to the Report and Recommendation on September 29, 2014. Applicant also filed a writ of mandamus. On November 25, 2014, the Honorable David C. Norton affirmed the dismissal of Applicant's petition and denied Applicant's motion for writ of mandamus. A certificate of appealability was also denied. Applicant petitioned for a rehearing and was denied on March 30, 2015.

Motion for Successive Federal Habeas Corpus

On October 20, 2014, Applicant filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a successive application for relief under 28 U.S.C. §§ 2254 or 2255. This motion was denied by order filed November 3, 2014. In re: James Anthony Primus, No. 14-462 (4th Cir. 2014).

CURRENT APPLICATION

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

1. "No signature on sentencing sheet."
 - a. "Phillips v. State, 314 S.E.2d 313"
2. ABHAN is not a lesser included offense of kidnapping.
 - a. "Al-Shabaaz v. State, 527 S.E.2d 742"
3. Overall validity of the sentence."
 - a. "State v. Bennett, 650 S.E.2d 490, 493"

Before this court are the Dorchester County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's prior post-conviction relief

action records, Applicant's appellate records, Applicant's federal habeas corpus action records, and the records for this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds that this 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 sentenced for his convictions of kidnapping and ABHAN on September 1, 2018. Remittitur from the direct appeal was issued on June 5, 2002. Accordingly, this application was due on June 5, 2003. This application was filed on April 2, 2018, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed with prejudice for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successive

The Court further finds the Application must be summarily dismissed because it is successive to Applicant's previous PCR applications. 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 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 application 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 this Court shall summarily dismiss the application with prejudice as successive to Applicant's previous PCR application.

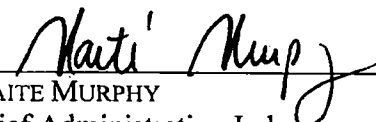
CONCLUSION

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 Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Christian Saville, Esquire
PCR Division – 1st Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Dorchester 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 8 day of Nov., 2018.



MAITE MURPHY
Chief Administrative Judge
First Judicial Circuit

St. George, South Carolina

The Supreme Court of SOUTH CAROLINA

James Anthony Primus Petitioner

252315

VS

STATE OF SOUTH CAROLINA

Respondent

Appellate Case No 2019-000961

Certificate of Service

I hereby certify that a copy of the foregoing Motion For Reconsideration was this date August 20 2019 Served upon the following individuals by placing a copy of the same VIA mail to his/her last known address

S.C. Supreme Court

MR. Daniel Shearouse

P.O. Box 11330

Columbia S.C. 29201

Benjamin Limbaugh

S.C. Attorney General

P.O. Box 11549

Columbia S.C. 29211

By

James Anthony Primus 252315

James Anthony Primus Pro Se

MacDougal Correctional Inst.

Birch Unit 2 C 13 B

1516 Old Gilliard Road

Ridgeville S.C. 29472

James Anthony Primus 252315

B2C 3B
MACDOUGALL CORR. INST.
1517 OLD GILLIARD RD.
RIDGEVILLE SC 29472

MacDougall Correctional Inst.
Mailroom

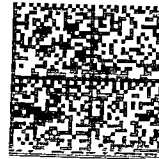
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South Carolina Supreme Court
MR. Daniel E Shearouse Clerk
P.O. Box 11330
Columbia S.C. 29201

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