

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE JOCELYN NEWMAN

2018-CP-42-0846

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WILLIAM L. BURNETT, #352645

APPELLANT,

S.C. SUPREME COURT

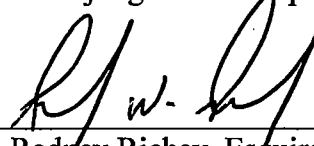
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

William L. Burnett appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Jocelyn Newman, Circuit Judge on September 8, 2020 an Order issued on September 15, 2020 and filed on September 25, 2020. The Appellant received notice of the judgment on September 25, 2020.



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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

William L. Burnett, #352645,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-0846

ORDER OF DISMISSAL

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SPARTANBURG COUNTY
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This matter comes before this Court by way of Applicant's post-conviction relief application filed March 9, 2018. Respondent made its Return and Motion to Dismiss on June 8, 2018, requesting the court summarily dismiss the action. The Honorable R. Keith Kelly issued the Conditional Order of Dismissal, filed June 15, 2018.

On June 2, 2020, the Honorable J. Mark Hayes, II, issued an Order for a motion to dismiss hearing be convened to expedite the final disposition in the case. A Motion to Dismiss hearing was held on September 8, 2020. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant was indicted at the April 2012 term of the Spartanburg County Grand Jury for first degree criminal sexual conduct with a minor (2012-GS-42-1465). The State amended the indictment to include a second count of first degree criminal sexual conduct (2012-GS-42-1465, amended). Applicant was also indicted for unlawful neglect by a legal custodian. (2012-GS-42-1466). Applicant was represented by James Check, Esquire. Hillary C. Welborn of the Seventh Circuit Solicitor's Office

prosecuted the case. The State dismissed one count of first degree criminal sexual conduct with a minor in exchange for Applicant's plea. On October 4, 2012, Applicant waived presentment of the amended indictment and pled nolo contendere under *North Carolina v. Alford*¹ to first degree criminal sexual conduct and unlawful neglect. The Honorable J. Mark Hayes, II, accepted Applicant's plea and, in accordance with the State's recommendation, sentenced Applicant to confinement for a period of fifteen years for criminal sexual conduct and ten years for unlawful neglect. At the time, Applicant was also on probation for financial transaction fraud (2010-GS-42-0157). Judge Hayes, found Applicant in violation of the conditions of his probation and reinstated a two year sentence for the probation violation. All sentences ran concurrently.

Subsequently, Applicant filed a "Motion to Reconsider" which was granted on March 7, 2013, following a hearing. Applicant's sentence was altered to reflect that Applicant's original fifteen year sentence for first degree criminal sexual conduct and the ten year sentence on child neglect were to remain, but both were suspended upon service of seven and one half years followed by five years of supervised probation. Applicant did not pursue a direct appeal.

First PCR Application: 2013-CP-42-2653

Applicant filed his first PCR application on June 25, 2013. He alleged the following grounds for relief:

1. Ineffective assistance of counsel, in that:
 - a. Counsel (James Cheek & Richard Wheelchel) only met with Applicant two times prior to guilty plea;
 - b. Counsel failed to review discovery materials with the Applicant;
 - c. Counsel failed to discuss possible defenses or challenges to Applicant's statement;
 - d. Counsel failed to present accurate and complete information on mitigation portion of sentencing;
 - e. Counsel failed to notify Applicant's family of plea or a time to discuss plea offer; and
 - f. Counsel brought in the Assistant Solicitor to meet with Applicant

¹ 400 U.S. 25 (1970).

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NORTH CAROLINA

- the morning of the plea against Applicant's will.
2. Civil rights violation, in that the interview with Detective Bohon was improper.

Respondent made its Return and on January 12, 2016, an evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Alicia A. Olive of the South Carolina Attorney General's Office. Applicant informed the Court of his desire to withdraw his application. After finding that Applicant's decision to withdraw his application was knowingly, voluntarily, and intelligently made, Judge Cothran by written order dated March 2, 2016, dismissed the application with prejudice.

Second PCR Application: 2016-CP-42-3626

In his second PCR application, Applicant alleged he was being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel in that:
 - a. Counsel failed to object to the prosecutions failure to present aggravating factors such as; the rape kit and medical examinations;
 - b. Counsel "failed to honor defendant's communication in correcting his own statements of nerve and heart problems";
 - c. Counsel failed to question potential witnesses Christie Brall;
 - d. Counsel failed to have Applicant sign his plea agreement and indictment in compliance with S.C. Code § 17-23-130;
 - e. Counsel failed to inform Applicant on the record of his constitutional right to appeal his convictions and sentences;
 - f. Applicant did not knowingly, willingly, or voluntarily waive his constitutional right to appeal his convictions and sentences;
 - g. Counsel failed to file notice of appeal; and
 - h. "But for counsel's errors the outcome of the case would have been different on appeal.
2. After-discovered Evidence:
 - a. "The medical examinations reports were sequestered by the prosecuting attorney, Ms. Hilliary C. Welburn. Only through contact with the 7th Judicial Circuit Solicitor's Office was I able to compel the release of these documents... Finally, after ethical order of Mr. Richard H. Wheelchel through Mr. Clay T. Allen did I receive them on October 1, 2015. I filed a Motion for New Trial based on Newly Discovered Evidence... Judge R. Keith Kelly denied the motion on May 13, 2016... There is substantive

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- documentation to back it up positive."
3. State and Federal Constitutional violations:
 - a. "Waiver of Presentment of Indictment";
 - b. "Self-Incrimination" – Applicant "was refused the opportunity to put his statement in his own handwriting" and was interrogated under duress after having suffered several seizures;
 - c. "Double Jeopardy" – "General Sessions remanded the case back to family court. It was heard and ruled upon [on] May 24, 2012 before the Honorable William Wyle, Jr. with Kenneth E. Lee representing [Applicant]. The ruling was in favor of [Applicant]; and
 - d. "Cruel and unusual punishment."

Respondent made its Return on May 18, 2017. Respondent moved to dismiss the PCR application, because the application was untimely and successive to Applicant's original PCR application. A Conditional Order of Dismissed was served on Applicant on June 20, 2017. A Final Order of Dismissal was served upon Applicant on August 15, 2017. The Honorable J. Derham Cole dismissed the Application with prejudice.

Summary of the Facts

On December 9, 2011, Applicant struck the victim, Applicant's stepdaughter, with a switch. On December 10, 2011, Applicant struck the victim with a belt. The victim's grandfather reported this abuse to the police after he saw the extensive bruises. The victim told officers Applicant made her stay up late regularly and if she fell asleep she was punished. The victim stated that when she fell asleep, Applicant would make her pull her pants and underwear down, put her hands on the wall, and then would spank her. The victim also stated that Applicant told her if she told anyone what happened he would take Christmas away.

While officers were investigating the neglect charges, the victim disclosed that Applicant kissed her on the mouth, stuck his tongue down her throat, started feeling her chest, in between her legs, and both inside and outside her clothing starting in 2007 when victim was seven years old. Applicant started regularly touching in between her legs and began performing oral sex on her on a regular basis starting when she was ten years old. Applicant stated he kissed and sucked on her breasts and made her touch his penis and butt. The victim stated this continued until she was twelve years old.

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Applicant was Mirandized and confessed to inappropriately touching the victim about five times total. Applicant stated the victim initiated the contact, kissing him and putting her hands down his pants. Applicant stated he would ask her to stop but she would refuse and promise not to tell anyone. Applicant stated the victim grabbed his arm and made him touch her breasts and in between her legs. Applicant stated he felt sorry for the victim, so he tried to show her affection and needed help in what he had done. Applicant had a mental health evaluation and the results showed he was competent to stand trial and was found criminally responsible.

Current Action Before this Court

In his third and current PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds²:

1. "Dismissed Case No. 2012-GS-42-1465 & No sex offender Registration":
 - a. "The multiplicitious indictment was nolle prosequi and this applicant asserts it is a 14th Amendment violation of the U.S.C.A."
2. "Judicial Misconduct":
 - a. "Honorable Mark Hayes II had a foreknowledge of indictment and failed to inquire of reason on the record. See Edward L Sessions (matter of)."
3. In response to question 16 of the application, Applicant stated the following:
 - a. "False Imprisonment – After Discovered Evidence, Found Information through FOIA."

At the motion to dismiss hearing, Applicant alleged he was entitled to relief based upon newly discovered evidence that he was unconstitutionally convicted and imprisoned because multiple charges were on one warrant pertaining to the same victim; something Applicant stated violated his constitutional rights.

Summary of Applicant's Testimony

Before Applicant testified, Counsel requested to be relieved because Applicant's allegation lacked merit. Without officially relieving Counsel, Applicant informed the court of his Newly Discovered Evidence. Applicant testified that he was falsely imprisoned because he was informed that

² As of April 4, 2018, Applicant is no longer incarcerated.

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his charges were dismissed under one warrant.³ He also stated that he had multiple charges on one warrant, which he claimed was unconstitutional. Applicant stated he never signed the warrants and did not know the allegedly unconstitutional nature of these warrants until recently. He stated that facing two charges of criminal sexual conduct with the same victim in both was unconstitutional. Applicant stated he is entitled to relief based upon this Newly Discovered Evidence.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, the plea transcript, direct appeal and prior PCR action records, and this PCR action's records. This Court has further had the opportunity to consider Applicant's testimony at the motion to dismiss hearing and closely pass upon his credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Newly Discovered Evidence

Applicant's assertion of newly discovered evidence concerning the alleged facial defect of the warrant, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C).

³ Based upon Applicant's testimony, this Court's understanding is that Applicant confused the warrant for the indictment and, thus, all claims pursuant to the warrant were made in response to perceived issues with the indictment instead.

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In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Therefore, an applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

"(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions."

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant claims he is entitled to relief based upon newly discovered evidence because he was charged with multiple charges involving the same victim that were all placed on the same indictment. He did not, however, present any evidence except for his own testimony to substantiate this claim. Additionally, this court finds his allegation that multiple charges regarding the same victim and having multiple charges on the same indictment is *per se* unconstitutional lacks merit. Additionally, even if Applicant was correct in his constitutional analysis, this Court finds it highly unlikely that Applicant did not know, or could not have known through exercise of reasonable diligence, until within the year prior to filing the application.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a *prima facie* showing. Therefore, this matter shall be summarily dismissed with prejudice.

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 §§ 17-23-10, et seq.

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SOUTH CAROLINA

(2003). South Carolina Code Annotated Section 17-27-45(a) reads 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). Applicant was sentenced on October 4, 2012. The sentence was altered on March 7, 2013. This application was filed on October 3, 2016, well beyond the statutory filing period expiration date.

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). Additionally, South Carolina Code Annotated Section 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." Therefore, Applicant's current application must be summarily dismissed for untimeliness.

Successiveness

The Court also finds that 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

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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 PCR 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 PCR applications; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR applications. Therefore, he has failed to meet the burden imposed upon him. Thus, this Court shall summarily dismiss the application for successiveness.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

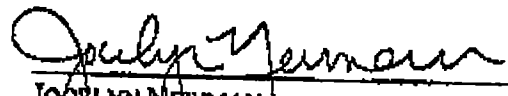
This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 203, SCACR provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice

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of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED that the PCR Application be denied and dismissed with prejudice.

AND IT IS SO ORDERED.



JOCELYN NEWMAN
Presiding Judge

September 15, 2020
Spartanburg, South Carolina.

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STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4200846

William L. Burnett

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other Rule 41(b), SCRPC
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

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 SPARTANBURG COUNTY
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ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Joseph Newman
 Circuit Court Judge

2757

September
 16, 2020
 Date

Judge Code

