

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Anthony Chapman, #251075,  
Applicant,

v.

State of South Carolina,  
Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT  
)  
)  
)

) Case No.: 2020-CP-42-00681  
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) **FINAL ORDER OF DISMISSAL**  
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SPARTANBURG COUNTY  
AMY W. COX

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This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Anthony Chapman on February 17, 2020. Respondent moved to summarily dismiss the application on October 6, 2020, for untimeliness and successiveness.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated October 8, 2020, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not become finalized. Applicant was personally served with this conditional order of dismissal on December 10, 2020, as evidenced by the attached affidavit of personal service.

On November 10, 2020, Applicant filed his response to the conditional order of dismissal. In this response, Applicant states he is not barred by the statute of limitations because his current claims pertain to the ineffective assistance of PCR appellate counsel. He states that he is entitled to relief because PCR appellate counsel did not raise all of the issues he wanted raised and because he was prohibited from engaging in hybrid representation. He states PCR appellate counsel is required to "brief the arguable issues despite counsel's belief the appeal is frivolous or



without merit.”<sup>1</sup> Applicant claims PCR appellate counsel’s failure to do this constituted ineffective assistance of counsel, entitling him to a second PCR action on those claims. On February 8, 2021, Applicant filed a letter requesting a status update on his case, in which nothing substantive was addressed.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

Ineffective assistance of PCR Counsel is not a valid claim under the PCR act. The only exception to this rule is found in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), which has not been alleged. Applicant, despite his dissatisfaction with PCR appellate counsel’s decision regarding issues raised, was afforded an appeal of his initial PCR action and is not able to bring the current claims, despite his dissatisfaction. Thus, Applicant’s current claim is not cognizable under the PCR act and, thus, remains summarily dismissed.

Additionally, this Court finds that the application is barred for untimeliness. Applicant was convicted on October 5, 2010, and the remittitur from his direct appeal issued on October 28, 2011. Thus, his PCR application was due on October 29, 2012. The current application was not filed until February 17, 2020. Applicant has failed to sufficiently explain over seven year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Further, Applicant’s application is barred on successiveness grounds. Applicant’s current allegations were or could have been raised in earlier proceedings based upon Applicant’s prior

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<sup>1</sup> Applicant received appellate review of his initial PCR action, in which relief was denied (2016-001230).

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PCR applications and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this 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). Applicant has failed to make such a showing based on the information set forth in his responses, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed for untimeliness and successiveness. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons in this Court's conditional order of dismissal, the PCR application is hereby denied and dismissed with prejudice.

This court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

**AND IT IS SO ORDERED** this 12<sup>th</sup> day of March, 2021.

J. MARK HAYES, II<sup>2</sup>  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

<sup>2</sup> The Honorable J. Derham Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he oversaw Applicant's plea proceedings, the motion to dismiss and proposed conditional order of dismissal are being sent to the Honorable J. Mark Hayes, II, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.

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ALAN WILSON  
ATTORNEY GENERAL

March 10, 2021

The Honorable J. Mark Hayes, II  
Chief Administrative Judge, Seventh Circuit  
180 Magnolia Street  
Spartanburg, SC 29306

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**Re: Anthony B. Chapman, #251075 v. State of South Carolina**  
**2020-CP-42-00681**

Dear Judge Hayes:

Enclosed please find the proposed Final Order of Dismissal in the above-captioned case. For your convenience, I am enclosing a copy of the signed and served Conditional Order of Dismissal for your review.

If this Order meets your approval, please sign and forward to the Spartanburg County Clerk of Court for filing.

Sincerely,

/s Chelsey F. Marto  
Chelsey F. Marto  
Assistant Attorney General

CFM/jaj  
Enclosure(s)

cc: Anthony B. Chapman, #251075