

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Anthony Chapman, #251075,)
Applicant,)

Case No.: 2020-CP-42-00681

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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SPARTANBURG COUNTY
ANTHONY GDX

This matter comes before the Court by way of a post-conviction relief application filed by Anthony Chapman (hereafter "Applicant") on February 17, 2020. Respondent made no motion requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2010, the Spartanburg County Grand Jury indicted Applicant for Manufacturing Marijuana (2010-GS-42-0667), Trafficking in Methamphetamine or Cocaine Base (2010-GS-42-0668), and Possession with Intent to Distribute Cocaine (2010-GS-42-0669). Michael D. Brown, Esquire represented Applicant. On October 5, 2010, Applicant pled guilty as indicted to all charges before the Honorable J. Derham Cole, circuit court judge. Pursuant to the State's recommendation, Judge Cole sentenced Applicant to twenty years imprisonment, sentences running concurrently. On October 15, 2010, Petitioner filed a *pro se* motion for reconsideration, which was never ruled upon.

Applicant filed a timely Notice of Appeal on April 25, 2011. On October 12, 2011, the Court of Appeals dismissed the appeal for failure to timely serve Respondent. The Remittitur was issued on October 28, 2011.

First PCR Case (2011-CP-42-5457)

Applicant filed his first PCR application on December 8, 2011, in which he alleged the following grounds for relief:

1. "4th Amendment Violation; probable cause."
 - a. "Unlawful probable cause for search and arrest."
2. "6th Amendment Violation; Ineffective counsel."
 - a. "Failure to investigate."
3. "Voluntariness of Guilty Plea; right to trial, 5th, 6th, and 14th Amendment."
 - a. "Not fully informed of discovery pertaining to arrest."
4. "Failure to file appeal."
 - a. "Counsel stated no appeal could be filed."

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Respondent made its Return on or about September 11, 2012. An evidentiary hearing to the matter was convened on January 21, 2014, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Falkner Wilkes, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On May 31, 2016, the Honorable Roger L. Couch issued the order of dismissal denying Applicant's PCR application.

On June 6, 2016, a notice of appeal was filed. Briefing was completed on November 1, 2017. On April 19, 2018, by written order the South Carolina Supreme Court denied certiorari. The Remittitur was issued on May 7, 2018.

Prior Habeas Corpus Case (6:19-cv-00404-RMG-KFM)

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 United States Code Section 2254 on February 14, 2019. Applicant set forth the following grounds for relief:

1. "Denial of due process. Failure to provide meaningful appellate review of the PCR court's denial of relief."
 - a. "The Appellant's transcript was incomplete and missing portions of testimony on meritorious appellate issues. Because the transcript was missing substantial portions of critical testimony Appellate counsel moved the state supreme court to grant the Applicant a new PCR hearing. Applicant's motion was filed on 04/06/2017 which was three and a half years after the PCR evidentiary

hearing. The Supreme Court denied the motion and briefing continued. Petitioner included the lack of meaningful appellate review issue as the sole issue in his petition for writ of certiorari. The supreme court subsequently denied the motion."

Respondent filed its Return and Motion for Summary Judgment on or around April 5, 2019. On November 13, 2019, Magistrate Judge Kevin McDonald issued the Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. *Chapman v. Tucker*, 6:19-cv-00404-RMG (D.C.S.C. filed Nov. 13, 2019). Applicant's objection to the Report and Recommendation was received on or around December 2, 2019. On December 11, 2019, the Honorable Richard M. Gergel, Court Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgment and dismissed Applicant's petition. *Chapman v. Tucker*, 6:19-cv-00404-RMG (D.C.S.C. filed Dec. 11, 2019).

II. Current Action before this Court

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

1. "Ineffective assistance of appellate counsel."
 - a. "Review and safeguard my right to appeal as required by *Anders*. Counsel should have used the transcript provided as well as video tape evidence to brief meritorious issues. Exhausting my State's remedies in the State's highest Court."
2. "6th Amendment violation."
3. "14th Amendment Violation – Due Process."

Before this Court are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, the current PCR application, and prior appellate, PCR, and Habeas Corpus Records by reference.


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III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

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, 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.”

Applicant pled guilty to all charges on October 5, 2010 and the Remittitur was issued on October 28, 2011. The application was therefore due on October 29, 2012. This application was filed on February 17, 2020, well beyond the statutory filing period. Therefore, the application



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should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

The application shall 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 have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 418 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the 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 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. *Alice 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, 409 S.E.2d at 394. 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 application; thus, the current application is successive and barred

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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 application. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR application.

IV. Conclusion

Pursuant to South Carolina Code Annotated Section 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 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 Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

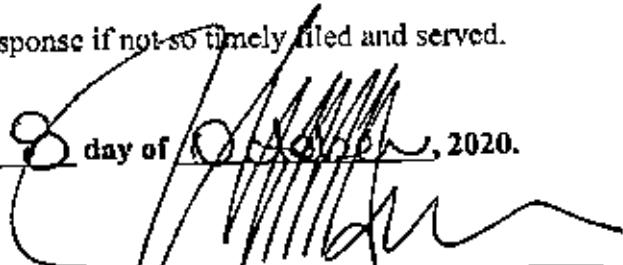
Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Seventh Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty 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 October, 2020.



MARK HAYES, II
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina



ALAN WILSON
ATTORNEY GENERAL

October 6, 2020

The Honorable J. Mark Hayes, II
Chief Administrative Judge
180 Magnolia Street
Spartanburg, South Carolina 29306

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

Dear Judge Hayes:

Enclosed please find the original proposed **Conditional Order of Dismissal** in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Spartanburg County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

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

CFM/ec
Enclosure(s)

cc: Anthony B. Chapman, #251075

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