

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

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

Donna Boyd,)

Case No.: 2019-CP-23-3867

Applicant,)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)

ENTERED COMPUTER

Respondent.)

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC

2021 MAY -5 PM 3: 20

This matter comes before the Court by way of an application for post-conviction relief filed by Donna Boyd (“Applicant”) on July 8, 2019. The State (“Respondent”) filed its return on September 2, 2020, moving for the summary dismissal of the application with prejudice on the grounds that the application was not timely filed, the application is barred as a successive application, and the application is barred by the doctrine of res judicata. For the reasons provided in this order, Respondent’s motion to dismiss is granted.

PROCEDURAL HISTORY

On November 16, 2012, Applicant was arrested and charged with filing a false police report concerning a misdemeanor (warrant 2012A2330204055) in Greenville County stemming from an incident on October 30, 2012, wherein Applicant filed a police report claiming she had been assaulted by Jack Crumpton with Foothills Investigations when Crumpton served Applicant with documents. Applicant’s allegations of assault were later refuted by video evidence. Applicant was represented originally by Michael F. Talley, Esquire, who was relieved as counsel on April 9, 2014, upon his own motion. On June 25, 2014, Applicant proceeded to a jury trial as a pro se defendant before the Honorable Dean E. Ford, Greenville County Magistrate Judge. George K. Lyall, Esquire, prosecuted the case. At the conclusion of the trial,

the jury found Applicant guilty as charged.

On July 7, 2014, Applicant filed a notice of appeal in the Greenville County Court of Common Pleas. A hearing regarding the appeal was held on August 12, 2014, but Applicant did not appear. In an order issued on August 14, 2014, the Honorable D. Garrison Hill issued an order dismissing Applicant's appeal due to her failure to prosecute.

On August 27, 2014, Applicant filed a notice of appeal in the South Carolina Court of Appeals. Applicant was a pro se appellant initially, but she later retained J. Falkner Wilkes, Esquire. Wilkes argued that Judge Hill erred in dismissing the appeal because the record showed that Applicant did not neglect her case and dismissal was too harsh a sanction under the circumstances. Respondent was represented by Senior Assistant Deputy Attorney General Salley W. Elliot of the South Carolina Attorney General's Office, who argued Wilkes' arguments were not properly before the Court of Appeals as they were being made for the first time on appeal, and that Judge Hill properly dismissed the appeal because Applicant had notice of the hearing and chose not to appear and participate. The Court of Appeals affirmed in an unpublished opinion. State v. Boyd, Op. No. 2016-UP-299 (S.C. Ct. App. filed June 15, 2016) (per curiam) (indicating Applicant's arguments on appeal were not preserved for appellate review because she did not raise them before Judge Hill). Wilkes filed a petition for rehearing, arguing it was improper for Judge Hill to dismiss the appeal sua sponte based on Applicant's failure to prosecute and that the dismissal was not warranted under the circumstances. The Court of Appeals denied the petition for rehearing. State v. Boyd, S.C. Ct. App. Order filed August 18, 2016.

Wilkes filed a petition for a writ of certiorari with the South Carolina Supreme Court, arguing Judge Hill erred in dismissing the appeal and that the Court of Appeals' opinion

conflicted with the Supreme Court's precedent. Senior Assistant Deputy Attorney General J. Benjamin Aplin represented Respondent before the Supreme Court, and argued Wilkes' arguments were not preserved for appellate review because Applicant did not raise them before Judge Hill and that Judge Hill properly dismissed the appeal. The Supreme Court denied Applicant's petition for a writ of certiorari. State v. Boyd, S.C. Sup. Ct. Order filed May 30, 2017. The remittitur was issued June 12, 2017.

2017-CP-23-7725

Applicant filed her first application for post-conviction relief on December 4, 2017, claiming that she was entitled to relief because the State committed prosecutorial misconduct by abusing its prosecutorial discretion and vindictively prosecuting Applicant, (2) there was no probable cause for her arrest, (3) the State failed to prosecute its case when it delayed her prosecution by a year-and-a-half, and (4) the State violated Brady v. Maryland, 373 U.S. 83 (1963), by purposely withholding and destroying evidence. Respondent made its return on May 2, 2018, requesting that the court convene an evidentiary hearing.

A hearing was held at the Greenville County Courthouse on October 26, 2018, with the Honorable Alex Kinlaw, Jr., presiding. Applicant was present as a pro se party, and Respondent was represented by Assistant Attorney General DeShawn Mitchell of the South Carolina Attorney General's Office. At the hearing, Applicant proceeded based upon the following claims: (1) Judge Ford improperly answered a jury question before the jurors in the jury deliberation room with Applicant and the solicitor present, (2) one of the State's witnesses had a conversation with an alternate juror, and (3) Applicant's rights were violated when a video was destroyed in the case. On January 24, 2019, Judge Kinlaw issued an order denying the application and dismissing it with prejudice.

Applicant filed a notice of appeal. Applicant elected to proceed as a pro se appellant, and was made aware by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense of the dangers of self-representation. The Supreme Court later dismissed the appeal, finding that Applicant failed to provide the Court with proof that Applicant had ordered the transcript from the court reporter in a timely manner. Boyd v. State, S.C. Sup. Ct. Order filed April 22, 2019. Applicant then filed a motion to reinstate her appeal. Assistant Attorney General Taylor Z. Smith represented Respondent on appeal, and filed a return to Applicant's motion, arguing Applicant had still failed to demonstrate her compliance with the South Carolina Appellate Court Rules and was aware of the dangers of self-representation when she declined the assistance of Dudek. Applicant also filed a motion to remand for Judge Kinlaw to make specific findings of fact and conclusions of law. The Supreme Court denied Applicant's motion to reinstate and dismissed the motion to remand as moot. Boyd v. State, S.C. Sup. Ct. Order filed June 27, 2019. The remittitur was issued on June 27, 2019.

CURRENT APPLICATION

In her second and current application for post-conviction relief, filed on July 8, 2019, Applicant alleges she is entitled to relief based upon multiple claims, which are as follows: (1) the State committed prosecutorial misconduct because the solicitor abused her discretion and vindictively prosecuted Applicant and delaying its prosecution, (2) the State did not have probable cause to arrest Applicant, (3) the State violated Brady v. Maryland, 373 U.S. 83 (1963), by withholding and/or destroying evidence, and (4) "State and judicial interference" occurred. Applicant prays that the Court would grant post-conviction relief and vacate her conviction, expunge her record, and afford her due process.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the records of the Greenville County Magistrate's Court; the records from Applicant's appeal to the Greenville County Court of Common Pleas, the South Carolina Court of Appeals, and the South Carolina Supreme Court; the records from Applicant's first application for post-conviction relief and its appeal; and all filings in this matter. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court makes the following findings of fact and conclusions of law.

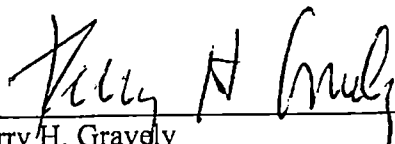
The Honorable Edward W. Miller issued a conditional order of dismissal on September 3, 2020, conditionally granting Respondent's motion to dismiss and giving Applicant twenty days upon the service of the order on her to file a response giving reasons, factual or legal, that the dismissal should not become final. That conditional order of dismissal was filed with the Greenville County Clerk of Court on September 9, 2020, and the Clerk of Court's stamp on the final page of that order indicates that a copy of it was mailed to Applicant on the date of filing. Respondent also served Applicant with a copy of the conditional order of dismissal, as is shown by the attached certificate of service and cover letter dated September 18, 2020, which are both incorporated into this order.

Applicant has failed to file a response to Judge Miller's conditional order of dismissal. Instead, Applicant has filed two requests that the response deadline be extended: the first request was filed on September 25, 2020, and the second was filed on November 5, 2020. Though she has had ample time in which to do so, Applicant has failed to offer any reason that the conditional dismissal should not become final. Applicant has failed, therefore, to meet the burden imposed upon her in this matter. Respondent's motion for the summary dismissal of this application is granted, and the application is denied and dismissed with prejudice because the

application was not timely filed, the application is barred as a successive application, and the application is barred by the doctrine of res judicata.

IT IS THEREFORE ORDERED that Respondent's motion for the summary dismissal of the application is granted and this application is denied and dismissed with prejudice. This Court hereby advises the Applicant that she must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 26th day of April, 2021.



Perry H. Gravely
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
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IN THE COURT OF COMMON PLEAS

2019-CP-23-3867

DONNA BOYD ,)
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Applicant,)
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vs)
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STATE OF SOUTH CAROLINA,)
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Respondent.)
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_____)

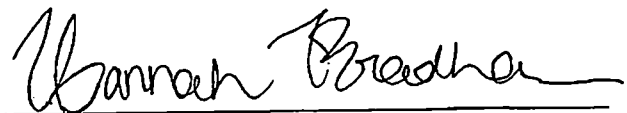
CERTIFICATE OF SERVICE BY MAIL

2021 MAY - 5 PM 3: 20
FILED-CLERK OF COURT
PAUL B. WICKENSIMMER
GREENVILLE CO. SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Proposed Final Order of Dismissal** of the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donna Boyd, Pro Se
Post Office Box 1168
Mauldin, SC 29662

DATED this 13th day of April.



Hannah Bradham, Legal Assistant
For Respondent

C.C. Attorney General