

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Shannon Lancaster, #341546,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-01498

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Shannon Lancaster on May 5, 2020. Respondent made its return, 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 October 2016, the Spartanburg County Grand Jury indicted Applicant for trafficking in methamphetamine, second offense (2016-GS-42-5068). Ricky Keith Harris, Esquire represented Applicant. James Edward Hunter, Esquire prosecuted the case. On March 2017, Applicant pleaded guilty before the Honorable J. Derham Cole. Pursuant to negotiations between Applicant and the State for a sentence of twelve to eighteen years' imprisonment, Judge Cole sentenced Applicant to fifteen years' imprisonment. On March 23, 2017, Applicant filed a *pro se* motion for reconsideration, which was denied by Judge Cole on March 27, 2017.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak, Esquire, though filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. (2018-UP-325). The remittitur was issued on August 10, 2018. On August 23, 2018, Applicant was

denied a motion to suppress by the South Carolina Court of Appeals. On November 16, 2018, another remittitur was issued.

First PCR Action: (2018-CP-42-03065)

Applicant subsequently filed his first PCR application on September 4, 2018, amended September 18, 2018, in which Applicant alleged:

1. Ineffective Assistance of Counsel (failure to investigate):
 - a. Failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses.
 - b. Failure to investigate the evidence and discovery, to make sure Investigator James Ruane processed an applicant for the interception of wire, electric, or oral communications, for a drug trafficking investigation. Pursuant to S.C. Code Section 17-30-70, the investigator failed to process an application that has to be initiated by the Chief of SLED. After reviewing the application the Attorney General may authorize the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter. Investigator James Ruane is in violation of S.C. Code Section 17-30-70 application process, for this case.
 - c. Failure to investigate the evidence and discovery, to make sure the Investigator James Ruane had a judge of competent jurisdiction enter an ex parte order, as modified authorizing the interception of wire, oral or electrical communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that: (1) there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense provided in Section 17-30-70, pursuant to S.C. Code Section 17-30-80(D)(1). The investigator James Ruane is in violation of S.C. Code Section 17-30-80(D)(1) authorizing order for the Interception of Wire, Electric or Oral Communications.
 - d. Failure to investigate intercepted communication, and to make sure the said evidence was not illegally disclosed, pursuant to S.C. Code Section 17-30-75. Investigator James Ruane illegally disclosed said evidence in violation of S.C. Code Section 17-30-75.
 - e. Failure to investigate the evidence to make sure the informant "David Brent Goode" was registered with the South Carolina Law Enforcement Division, for a drug trafficking investigation. Investigator James Ruane failed to register the informant "David Brent Goode" with SLED for this investigation. The Investigator James Ruane is in violation of SLED policy 13.30 use of informant in investigations.
2. Ineffective Assistance of Counsel (failure to provide defense):

- a. Failure to have a proper defense for physical evidence in this case.
 - b. Failure to have a valid strategy for this case.
 - c. Failure to request and require as part of discovery that copies of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as provided for by Section 17-30-105.
 - d. Pursuant to S.C. Code Section 17-30-130, failure to ensure that no impropriety occurred in the reporting of the intercepted communications to the Administrative Office of the United States court as outlined in 18 U.S.C. section 2519.
3. Ineffective Assistance of Counsel (failure to suppress):
- a. Pursuant to S.C. Code Section 17-30-110, failure to move to suppress this illegally gathered evidence and/or advise me of these grounds and/or the exclusive remedy.
 - b. Failure to move for a motion to suppress the unlawful audio/video recording and evidence to the S.C. Court of Appeals, pursuant to S.C. Code Section 17-30-110. The motion must be made before the reviewing authority, before the trial, hearing or proceeding. Furthermore, the Applicant has moved to suppress the evidence after his conviction, and the S.C. Court of Appeals has ruled, that motions to suppress are not appropriate on appeal. Applicant filed the motion pursuant to the South Carolina Homeland Security Act.
4. Ineffective Assistance of Counsel (failure to advise):
- a. Failure to advise Applicant and inform the court that none of these subsections in Chapter 30, Title 17, were adhered to, and that these actions and/or lack thereof were illegal pursuant to S.C. Code Section 17-30-20.
 - b. Failure to advise the court to take judicial notice that for the purpose of a criminal investigation, that Investigator James Ruane had never obtained any multiple law enforcement jurisdictional agreement as required by S.C. Code Section 23-1-210 and that when Investigation Ruane came to Cherokee County to pick me up for a drug investigation, he had no authority to do so, and acted illegally thus these actions and/or lack thereof constituted entrapment by law enforcement.
 - c. Failure by providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial. Therefore, Applicant's plea was unknowing and involuntary entered into pursuant to the Investigator violating S.C. Code Section 17-30-80 authorizing order, for the Interception of wire, electric, or oral communications.
 - d. Failure to advise and/or move for video footage to be excluded due to it being a partial and the whole story not being told and therefore inconclusive, as well as illegally obtained with no valid chain of custody.
 - e. Failure to advise me and inform the court, that Investigator James Ruane illegally recorded audio and video, without processing an application or authorizing order, for a drug trafficking investigation, pursuant to S.C. Code 17-30-70 and Section

17-30-80 and also conducted an unreasonable search, that violated Fourth and Fourteenth Amendment rights. Therefore, the audio/video recording and evidence was obtained in violation of Title 17, Chapter 30 of criminal procedures and is considered "Fruit of the Poisonous Tree" (See Exh 1, 2, 3 for Case No. 16040895).

5. Subject Matter Jurisdiction:
 - a. Failure to challenge subject matter jurisdiction of Applicant's guilty plea pursuant to the Investigator's violation of S.C. Code Section 17-30-70 application process for this investigation. Furthermore, the Grand Jury was improperly influenced with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Applicant's guilty plea.
6. Involuntary Plea:
 - a. "Coercing the defendant into a guilty plea."

Respondent made its return on April 18, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on February 20, 2020, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Jacob A. Isenberg of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ricky Harris, Esquire, also testified. Following the hearing, this Court took this matter under advisement. On April 29, 2020, the Honorable Lawton McIntosh issued the order of dismissal denying Applicant's PCR application.

A notice of appeal was made on May 20, 2020. On December 23, 2020, Joanna Delany, Esquire filed a petition for writ of certiorari and petition to be relieved as Counsel in the Supreme Court of South Carolina on behalf of Applicant, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). This matter remains pending.

II. Statement of Facts

On April 15, 2016, a Spartanburg County Sheriff's Investigator contacted Applicant to



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purchase methamphetamine.¹ (Plea Tr. 12-13). The Investigator picked Applicant up in Gaffney, drove him to a trailer park in Spartanburg, and dropped him off. (Plea Tr. 13). They went “back and forth” for a few hours because the methamphetamine was not ready. (Plea Tr. 13).

Later, the Investigator met Applicant at a Spinx and Burger King. (Plea Tr. 13). The two went back to the same trailer park that Applicant had been dropped at earlier. (Plea Tr. 13). At that point, Investigator gave Applicant \$1,250 in Spartanburg County Sheriff's Office recorded money. (Plea Tr. 13). Applicant then entered a trailer. (Plea Tr. 13). A Hispanic male then showed up and entered the trailer. (Plea Tr. 13). Subsequently, Applicant returned to the vehicle and gave Investigator almost twenty-eight grams in methamphetamine. (Plea Tr. 13). Applicant was arrested a couple of days later with at least \$140 in marked funds from the Spartanburg County Sheriff's Office. (Tr. 13). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 14).

III. 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 counsel for failure to investigate.”
 - a. “Failure of counsel and the court, to investigate the laws of South Carolina as to whether they were “affixed” with the impression of the Great Seal of South Carolina. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read: S.C. Const. Act. III, Section 18, §18, Formalities of Act. No bill or joint resolution have the force of law until it shall have been read (3) times and on (3) several days in each house, has had the (Great Seal) of the State affixed to it, and has been signed by the president of the senate, and the speaker of the House of Representatives: provided, that either branch of the General Assembly may provide by rule for a first and third reading of any bill or joint resolution by its title only. The Great Seal of the state must be attached to an act before it can become effective, 1974-75. Op. Atty. Gen. 4013 pg. 85.”

¹ The investigator had previously been introduced to Applicant “as someone who had purchased meth.” (Plea Tr. 13).

2. "Newly Discovered Evidence" and "Fraud Upon the Court."

- a. "The Applicant asserts upon belief and fact, that on or around November 2017, the State newspaper reported the Great Seal of the State of South Carolina, missing from certain laws here in South Carolina. Furthermore, the Applicant has researched this newly discovered evidence with the S.C. Department of archives and history, with a Mr. Steven Tuttle confirming the Great Seal of South Carolina is not affixed to the 1993 Act No. 184 (see exhibit one). Also, the Applicant will submit a letter from a Mr. Steven Draffin addressed to Mr. Spencer Hewitt, that states the Original 1995 Act No. 7, has been lost and only a duplicate copy resides at the S.C. Department of archives and history (see exhibit 2). Both Federal and State constitutions forbid any law imparting the obligations of contracts. Therefore, the obligation of a contract is that duty of performing the contract according to its terms and intent which the law recognizes and enforces. Again, like any ordinary bill must in order to have force of law (must) have the Great Seal of the State attached thereto. Due to the facts of evidence, the Applicant moves this court to allow this post-conviction relief application to proceed. Further, the Applicant asserts that this matter is a due process violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and the S.C. Constitution, Article III, Section 18."

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 direct appeal, PCR, and PCR appeals records.

IV. 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 March 23, 2017 and the amended remittitur from the direct appeal was issued on November 16, 2018. The application was therefore due on November 17, 2019. This application was filed on May 5, 2020, beyond the statutory filing period. Therefore, the application 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 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 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, 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 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.

Newly Discovered Evidence (The Great Seal)

Applicant alleges there is no visible impression of the Great Seal on the Acts he was convicted under and that this deficiency entitles him to relief. This allegation is without merit. Our Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903).

Furthermore, under the enrolled bill rule, an act is properly passed when ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. *Medical Soc. of South Carolina v. Medical Univ. of South Carolina*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See *Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); *Commr’s of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. *Id.* Moreover, section 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm’n v. York Elec. Co-op., Inc.*, 275

S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

Applicant's discovery of the missing Great Seals does not constitute newly discovered evidence, nor is it grounds to nullify the law the Applicant was convicted under. This evidence was discoverable prior to the entry of the guilty plea and while Applicant was pursuing his original PCR action. By entering a guilty plea, Applicant waived his right to present any and all defenses that he may have had, and he cannot raise them now in his current PCR application based upon "newly discovered evidence."

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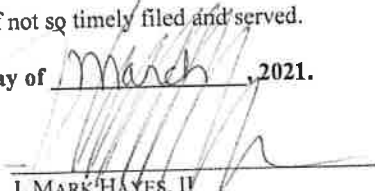
V. Conclusion

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

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 1st day of March, 2021.



J. MARK HAYES, II
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina