

EXHIBIT (B) ←

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Douglas J. Hill, #135153,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5712

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL B. WICK
GREENVILLE, SC

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This matter comes before this Court by way of an application for post-conviction relief filed by Douglas J. Hill (Applicant) on October 1, 2019. Respondent made its return on or about May 8, 2020, and moved therein for summary dismissal of the application on the basis that the application was prohibited by order of the South Carolina Supreme Court. This Court has reviewed the filings of both parties and finds that the application shall be dismissed summarily with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its November of 1995 term, the Greenville County Grand Jury indicted Applicant for assault and battery with the intent to kill (1995-GS-23-7051). Applicant was represented by C. Timothy Sullivan, Esquire (trial counsel), and Assistant Solicitor Judith M. Munson of the Thirteenth Circuit Solicitor's Office prosecuted the case. On March 19, 1996, through March 20, 1996, Applicant proceeded to trial before the Honorable C. Victor Pyle. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Pyle sentenced Applicant to imprisonment for life without the possibility of parole.

Trial counsel filed a timely notice of appeal. The South Carolina Court of Appeals affirmed in an unpublished opinion filed in 1998 (Op. No. 98-UP-009).

1998-CP-23-1446

Applicant filed his first application for post-conviction relief on March 31, 1998, arguing therein that he was entitled to post-conviction relief based upon the following grounds:

1. Applicant received the ineffective assistance of counsel;
2. Subject matter jurisdiction/illegal enhanced sentence; and
3. Cruel and unusual punishment.

Respondent filed its return on May 24, 1999. An evidentiary hearing was convened before the Honorable Henry F. Floyd on December 14, 1999. Applicant was present and represented by Frank L. Eppes, Esquire. Kevin Tierney, Esquire, of the South Carolina Attorney General's Office represented Respondent. After the conclusion of the hearing, Judge Floyd issued an order doing granting the application, vacating Applicant's sentence, and remanding for a new trial.

Respondent filed a timely notice of appeal. Assistant Attorney General Kathleen J. Hodges of the South Carolina Attorney General's Office represented Applicant on appeal. Assistant Appellate Defender Tara S. Taggart represented Applicant on appeal. Hodges filed a petition for a writ of certiorari, arguing Judge Floyd erred in denying the application for post-conviction relief. The South Carolina Supreme Court granted a writ of certiorari by an order issued on June 21, 2001. Ultimately, the Supreme Court reversed Judge Floyd's grant of post-conviction relief. Hill v. State, 350 S.C. 465, 567 S.E.2d 847 (2002). The Supreme Court later denied Taggart's petition for rehearing. The remittitur was issued on August 21, 2002.

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Applicant filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina on June 17, 2003. Respondent filed a return and moved for summary judgment on June 17, 2003. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation on September 15, 2003, in which he recommended that Respondent's motion for summary judgment be granted. On October 29, 2003, the Honorable

Henry M. Herlong, Jr., United States District Judge, issued an order granting Respondent's motion for summary judgment and dismissing the petition with prejudice.

2003-CP-23-6875

On October 8, 2003, Applicant filed a petition for a writ of habeas corpus in the circuit court. Respondent filed its return on November 9, 2005, and moved therein for the summary dismissal of the petition. On November 21, 2005, the Honorable Edward W. Miller issued a conditional order of dismissal, giving Applicant twenty days after the service of the order upon him in which to give reasons the dismissal should not become final. Applicant did not file a response. On February 9, 2006, the Honorable G. Edward Welmaker issued a final order of dismissal, finding Applicant failed to give a sufficient reason that the dismissal should not become final, denying the application and dismissing it with prejudice.

Applicant did not appeal Judge Welmaker's denial of relief.

2006-CP-23-6805

Applicant filed his second application for post-conviction relief on November 2, 2006, arguing that he was entitled to post-conviction relief based upon the following grounds:

1. Applicant received the ineffective assistance of counsel;
2. Subject matter jurisdiction;
3. Illegal enhanced sentence; and
4. Cruel and unusual punishment.

Respondent made its return on or about January 24, 2007, moving therein for the summary dismissal of the application due to its being barred by the statute of limitations and the prohibition against successive applications. On January 24, 2007, the Honorable D. Garrison Hill issued a conditional order of dismissal, giving Applicant twenty days after the service of the order upon him in which to give reasons the dismissal should not become final. Applicant did not file a response. On May 7, 2007, Judge Hill issued a final order of dismissal, finding Applicant failed to provide a

sufficient reason that the dismissal should not become final, and denying the application and dismissing it with prejudice.

Applicant did not appeal Judge Hill's denial of relief.

2008-CP-23-6365

Applicant filed his third application for post-conviction relief on August 21, 2008, arguing that he was entitled to post-conviction relief based upon the following grounds:

1. Unconstitutional sentence and sentencing procedure:
 - a. "Failed to apply Full Faith & Credit Clause."

Respondent made its return on or about October 29, 2008, and moved for the summary dismissal of the application due to its being barred by the statute of limitations and the prohibition against successive applications. On November 4, 2008, the Honorable John C. Few issued a conditional order of dismissal, giving Applicant twenty days after the service of the order upon him in which to give reasons the dismissal should not become final. Applicant filed a response to the conditional order, arguing (1) trial counsel was constitutionally ineffective for failing to object to the imposition of an illegal sentence, (2) Eppes was constitutionally ineffective during Applicant's first PCR action for failing to research and object to Applicant's illegal sentence, and (3) Judge Pyle violated Applicant's due process rights by imposing an illegal sentence. Applicant filed a second response in which he argued (1) that his sentence of imprisonment for life without the possibility of parole is unconstitutional that (2) that Applicant was not served with written notice that the State would seek that sentence. On February 24, 2009, the Honorable Larry R. Patterson issued a final order of dismissal, finding Applicant had failed to demonstrate a sufficient reason that the dismissal should not become final, and denying the application and dismissing it with prejudice.

Applicant filed a notice of appeal. The South Carolina Supreme Court dismissed the appeal because Applicant failed to show there was an arguable basis for asserting that Judge Patterson

erred in denying the third application for post-conviction relief, as required by Rule 243(c), SCACR. Hill v. State, S.C. Sup. Ct. Order filed May 5, 2009.

No. 10-296

In December of 2010, Applicant filed in the United States Court of Appeals for the Fourth Circuit a motion pursuant to U.S.C. § 2244 requesting an order authorizing the United States District Court to consider a successive petition for a writ of habeas corpus. The Court of Appeals denied the motion. In re Hill, 4th Cir. Order filed January 5, 2011.

No. 2015-000226

Applicant filed a petition in the South Carolina Supreme Court, asking it to direct the circuit to grant Applicant a new trial as the Supreme Court granted post-conviction relief to Applicant in the appeal in his first PCR action and to take action against anyone obstructing the Supreme Court's grant of relief. Hill v. State, S.C. Sup. Ct. Order filed February 10, 2015. The Supreme Court clarified that it did not grant post-conviction relief to Applicant or order that he be granted a new trial; instead, it reversed the PCR court's grant of relief to Applicant. Id. The Supreme Court denied Applicant's petition. Id.

2016-CP-23-4272

Applicant filed his fourth application for post-conviction relief on July 14, 2016, arguing that he was entitled to post-conviction relief based upon the following grounds:

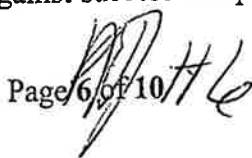
1. "Subject Matter Jurisdiction."
 - a. "The court did not have subject matter jurisdiction to try me under S.C. Code § 17-25-50(H). Where the solicitor is required to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and to the defendant's counsel, not less than ten days before trial. I was never served by the solicitor's office that the state had determined to seek a life sentence nor did my attorney inform me that the State was seeking a life sentence."
 - b. "The legislature revised this section effective January 1, 1996. Act no. 83, 18. 1995 S.C. Acts 565. The present version of the statute did not apply to

Applicant's 1995 AIK charge. See Act. No. 83, 62, 1995 S.C. Acts 595. S.C. Code Ann. § 17-25-45 (Supp. 1996)."

- c. "1995 Act No. 83, 62 provides that the 1995 amendment to this section applies prospectively to all crimes committed on or after the Act's effective date of January 1, 1996."
- d. "Applicant should receive a new trial and should have his life sentence vacated and remanded for resentencing with a twenty year maximum. Applicant was indicted for ABWIK in Greenville County (1991-GS-23-7051). He was tried on March 19, 1996, at Greenville Courthouse before the Honorable C. Victor Pyle, Jr. and a jury. He was convicted and sentenced to life without parole, S.C. Code § 17-25-45."

On December 20, 2017, Applicant filed a letter with the South Carolina Supreme Court, requesting that the Supreme Court direct the Greenville County Clerk of Court to provide Applicant with an update on the status of his fourth application. The Supreme Court requested by a letter dated January 29, 2018, that Respondent file a return in the matter. Respondent made its return on or about February 5, 2018, and moved for the summary dismissal of the application due to its being barred by the statute of limitations, the prohibition against successive applications, and the doctrine of res judicata. The Supreme Court later dismissed the matter involving Applicant's letter. Order, S.C. Sup. Ct. Filed March 7, 2018 (finding there was no extraordinary reason to entertain the matter in the Court's jurisdiction).

On February 7, 2018, the Honorable Robin B. Stilwell issued a conditional order of dismissal, giving Applicant twenty days after the service of the order upon him in which to give reasons the dismissal should not become final. Applicant filed a response to the conditional order, arguing (1) the trial court lacked the jurisdiction to sentence Applicant to imprisonment for life without the possibility of parole because Applicant was not given notice that the State intended to seek that particular sentence, (2) Judge Floyd erred by not making ruling upon all issues in his final judgment, (3) the South Carolina Supreme Court can review only final judgments, (4) Applicant was sentenced in accordance with a statute that was not in effect when he committed the crime, and (5) the statute of limitations, prohibition against successive applications for post-conviction relief,



and doctrine of res judicata did not apply to Applicant's application. On April 12, 2018, Judge Stilwell issued a final order of dismissal, finding Applicant had failed to demonstrate a sufficient reason that the dismissal should not become final, and denying the application and dismissing it with prejudice.

Applicant filed a notice of appeal. The South Carolina Supreme Court dismissed the appeal because Applicant failed to show there was an arguable basis for asserting that Judge Stilwell erred in denying the fourth application for post-conviction relief, as required by Rule 243(c), SCACR. Hill v. State, S.C. Sup. Ct. Order filed September 21, 2018. The Supreme Court also prohibited Applicant:

[F]rom filing any further collateral actions in the circuit court, including PCR actions and habeas corpus actions, as well as any motions relating to the previously filed collateral actions, challenging his 1996 conviction and sentence for assault and battery with intent to kill, or any motions in the underlying criminal case, including a motion pursuant to Rule 29, SCRCrimP, without first obtaining permission to do so from this Court.

Id. The remittitur was issued on October 10, 2018.

CURRENT APPLICATION

In his fifth and current application for post-conviction relief, Applicant alleges he is entitled to post-conviction relief because (1) he has newly discovered evidence and (2) Judge Pyle lacked the subject matter jurisdiction to sentence Applicant to imprisonment for life without the possibility of parole because Applicant was not served with a notice that the State would seek a life sentence. On January 27, 2020, Applicant filed an amended application, alleging therein that he is entitled to post-conviction relief because (1) his trial counsel failed to object to the trial court's sentencing Applicant to imprisonment for life without the possibility of parole because Applicant was not served notice of the State's intent to seek the sentence and (2) his trial counsel failed to object to the imposition of the sentence because the common law offense of rape could not properly be used

to enhance Applicant's sentence to life. On February 20, 2020, Applicant filed a second amended application,¹ arguing therein that he is entitled to post-conviction relief because (1) the trial court lacked the subject matter jurisdiction to sentence Applicant to imprisonment for life without the possibility of parole. Also in the second amended application, Applicant stated that he would like to abandon the amended application and any language therein referencing common law rape. Applicant prays the Court would grant post-conviction relief by granting him a new trial or adjusting his sentence; in his amended application, Applicant prays the Court would sentence him to time served.

Before this Court are the records of the Greenville County Clerk of Court regarding Applicant's conviction; the records from Applicant's direct appeal; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's prior post-conviction relief actions and appeals; the records from Applicant's petition for a writ of habeas corpus in state court; the records from Applicant's petitions for a writ of habeas corpus in federal court; the records from Applicant's petition to the South Carolina Supreme Court, asking it to grant him a new trial; and this fifth and current application for post-conviction relief and its amendments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court makes the following findings of fact and conclusions of law:

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary

¹ Applicant titled this filing as "Motion to Alter and Amend Post Conviction relief Application".

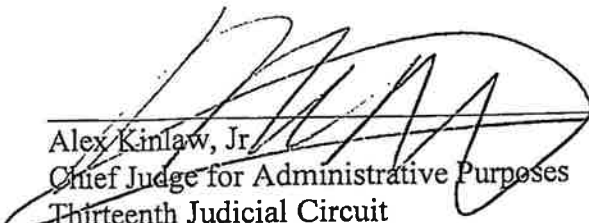
dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Respondent is entitled to judgment as a matter of law and the application shall be dismissed summarily with prejudice. The South Carolina Supreme Court ordered that Applicant was prohibited from filing another application for post-conviction relief without first obtaining permission to do so from the Supreme Court. Hill, S.C. Sup. Ct. Order filed September 21, 2018. Applicant has not obtained the Supreme Court's permission or else has failed to demonstrate that he has done so. As such, he shall not be permitted to continue in this PCR action.

IT IS THEREFORE ORDERED that the application for post-conviction relief is hereby denied and dismissed with prejudice due to its being prohibited by order of the South Carolina Supreme Court. This Court advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order upon him 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 16 day of July, 2020.



Alex Kinlaw, Jr.
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Cresswell, South Carolina.

Copy mailed to
Attorney General/JC Pro-se
on 7 / 21 / 2020.