

FILED FOR RECORD
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

IN THE FIRST JUDICIAL CIRCUIT

Bruce Houser, #243356,)

2016-CP-38-0623

Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Bruce Houser (Applicant) on May 4, 2016. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In March 1997, the Orangeburg County Grand Jury indicted Applicant for murder (1997-GS-38-0467), and possession of a firearm during commission of certain crimes (1997-GS-38-0874). Charles Gross, Esquire, represented Applicant at trial. On August 7, 1997, Applicant proceeded to trial before the Honorable Luke N. Brown. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction and sentence on January 13, 1999. State v. Houser, Op. No. 99-MO-005 (1999).

2000-CP-38-0119

Applicant subsequently filed his first application for post-conviction relief. An evidentiary hearing into the matter was convened on November 4, 2004, at the Calhoun County Courthouse. Applicant was represented by Carl B. Grant, Esquire. The Honorable Diane S. Goodstein denied and dismissed Applicant's application by order dated February 22, 2002. Applicant appealed the dismissal. The South Carolina Supreme Court denied Applicant's appeal without prejudice by order dated October 23, 2002, because a Rule 59(e) motion was still pending in the circuit court. Judge Goodstein denied Applicant's motion by order dated June 6, 2005.

2006-CP-38-0413

Applicant filed his second application for PCR on April 6, 2006, in which he alleged his PCR counsel from his first PCR action was ineffective in failing to seek appellate review of the denial of Applicant's PCR. The State made its return on October 26, 2007. An evidentiary hearing into the matter was convened on May 19, 2008, at the Calhoun County Courthouse. Clarissa W. Joyner, Esquire, represented Applicant. Assistant Attorney General Lance S. Boozer, Esquire, represented the State. The State consented to allow Applicant to appeal the denial of his previous PCR application. The Honorable James C. Williams, Jr. granted Applicant a belated PCR appeal by order dated July 22, 2008, and filed November 18, 2008.

CURRENT APPLICATION

In his third and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)
 - a. "I have been denied the right to appeal the denial of my first and second PCR [actions]."

- b. "Although this Austin issue was raised in my second PCR upon my first PCR counsel, still my second PCR counsel did not appeal my belated appeal as ordered by Judge James C. Williams, Jr. on July 22, 2008."
- c. "Also see attached letter to Appellate Division dated July 26, 2011, which to this day I have not gotten an answer regarding my belated appeal."
- d. "Here, it is clear that counsel Joyner has violated my due process by disregarding the judge's order where the state law expressly authorizes my right to seek appellate review of the denial of PCR matters."

Before this court are the Orangeburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's prior post-conviction relief action records, Applicant's appellate records, and the records for this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) 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 alleges he was denied his right to an appeal of his previous PCR action. The record clearly reveals Judge Williams issued an order granting Applicant a belated appeal in July of 2008, in which Judge Williams advised Applicant that any notice of appeal must be filed within thirty days of service of the signed copy. Furthermore, Judge Williams directed Applicant’s attention to Rule 227, SCACR, for appropriate procedures on appeal. This application was filed May 4, 2016. There is no justification to excuse Applicant’s delay of nearly eight years to allege he was again denied his right to appeal from the dismissal of his PCR application. Therefore, the application shall be summarily dismissed with prejudice for failure to file within the time mandated by the Post-Conviction Procedure Act.

Successive

The Court further finds the Application must be summarily dismissed because it is successive to Applicant’s previous PCR applications. 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 post-conviction relief 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. 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 allegations were or could have been raised in his prior PCR applications. Moreover, as stated above, there is no justification for Applicant's delay of nearly eight years in asserting he was denied his appeal of his previous PCR action. This Court finds the successiveness of this application shall not be excused. Therefore, this application shall be dismissed with prejudice as successive to Applicant's previous PCR actions.

Laches

The application shall also be dismissed under the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). This requirement "guards the State's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620

S.E.2d 743, 745 (2005) (*quoting* Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief almost two decades after his conviction, and almost nine years after his last PCR action. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review Applicant’s claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g.,* Bray at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the application shall also be summarily dismissed as barred by the equitable doctrine of laches.

{ Conclusion and signature on the following page }

CONCLUSION

Pursuant to S.C. Code Ann. § 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 (20) 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 Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Christian Saville, Esquire
PCR Division – 1st Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Orangeburg County Clerk of Court and opposing counsel within twenty (20) 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 27th day of April, 2018.



EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina