

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Keith Bradley, #23811)
Petitioner,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

3970
Case No.: 2019-CP-10-3790

ORDER OF DISMISSAL

2021 MAY 18 AM 11:29
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

I. Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the August 2006 term of the Charleston County Grand Jury for Murder (2006-GS-10-7114). Beattie Butler, Esquire, represented the Applicant. Applicant proceed to trial on January 14-16, 2008, after which a jury found him guilty as indicted. The Honorable Benjamin H. Culbertson sentenced the Applicant to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III of South Carolina Office of Indigent Defense filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Bradley*, Op. No. 2010-UP-007 (S.C. Ct. App. filed January 21, 2010). The Remittitur was issued on February 8, 2010.

II. Current State Habeas Petition filed in Common Pleas

In his petition for writ of habeas corpus, Petitioner alleges that he is being held in custody unlawfully for the following reason:

"Having shown murder and punishment for murder 16-3-20 don't have the Great Seal affixed to the acts Petitioner request that he be release from the custody of the Respondent."

III. Current Action Is Dismissed for Lack of Subject Matter Jurisdiction

This Court lacks subject matter jurisdiction of this matter and therefore, this action is dismissed pursuant to Rule 12(b)(1), SCRPC. Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. However, a state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)¹. Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct. App. 2002) (citing State v. Brown, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. Id. (citing State v. Brown, 343 S.C. 342, 346, 540 S.E.2d 846, 848 (2001)). “The acts of a court with respect to a matter as to which it has no jurisdiction are void.” Id.

Moreover, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a [post-conviction relief] action.” Keeler, 330 S.C. 568, 500 S.E.2d 123. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act may not be raised by a petition for a writ of habeas corpus before the circuit or lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 329 S.C. 37, 495 S.E.2d

¹ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, *cert. denied*, 498 U.S. 972 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation “which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

426. A petitioner may allege constitutional violations in post-conviction relief proceedings, unless the issue could have been raised on direct appeal. Id.; Keeler 330 S.C. 568, 500 S.E.2d 123.

A habeas corpus petition must support the requested relief. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, a petitioner must make out a *prima facie* case showing he is entitled to relief, and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 329 S.C. 37, 495 S.E.2d 426.

To warrant a hearing, the petition must include two specific allegations. First, the petition must allege the petitioner has exhausted all available post-conviction relief remedies. Gibson, 329 S.C. 37, 495 S.E.2d 426; Hunter, 316 S.C. 104, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 329 S.C. 37, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as post-conviction relief, are unavailable or inadequate. Gibson, 329 S.C. 37, 495 S.E.2d 426.

Here, the Petition must be dismissed because it is procedurally barred, leaving this Court without jurisdiction. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in an application for post-conviction relief. The Petition wholly fails to meet the standards required for the issuance of this extraordinary writ. Petitioner provides no reason as to why his allegations could not have been raised in an application for post-conviction relief. Because the Petition is procedurally barred, the only remaining form of relief is left to the South Carolina Supreme Court under its original jurisdiction, leaving this Court without jurisdiction. The failure to file this action in the proper venue requires dismissal of the action for lack of subject matter

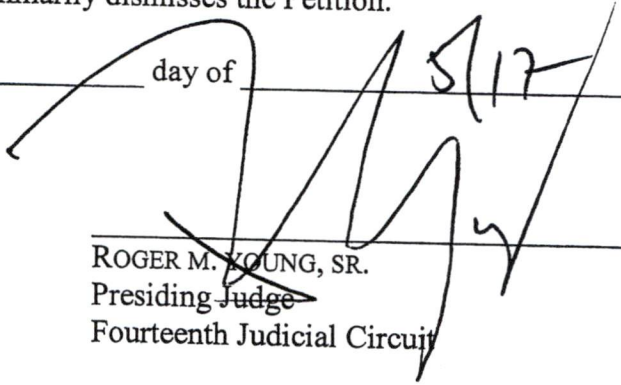


jurisdiction. Thus, these claims cannot be raised in a petition for habeas corpus in the Circuit Courts of South Carolina. Accordingly, the Petition is summarily dismissed.

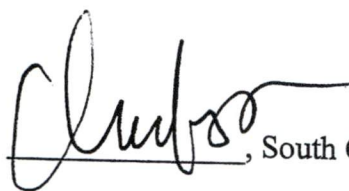
IV. Conclusion

WHEREFORE, this Court summarily dismisses the Petition.

AND IT IS SO ORDERED this _____ day of 5/17, 2021.



ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit



_____, South Carolina