

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

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

Brian Mansfield, #249124, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

2011-CP-40-01950

CONDITIONAL ORDER OF DISMISSAL

RICHLAND COUNTY  
FILED  
2012 APR 19 AM 9:59  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed March 22, 2011.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the March 1998 term of the Richland Grand Jury for Attempted Burglary - First Degree (1998-GS-40-30543). He was represented by attorney E. Tony Dessausure, Esquire, on the charge(s). On April 13, 1998, Applicant proceeded to jury trial before The Honorable M. Duane Shuler where he was convicted of the charge(s) as indicted. At the close of the trial, Applicant pled guilty to Possession of a Pistol as well. Applicant was sentenced to thirty-five (35) years imprisonment on the Attempted Burglary charge and one (1) year imprisonment on the Pistol charge. On June 1, 1998, the Court reconvened for a Sentence Reconsideration Hearing at which Judge Shuler reduced Applicant's sentence to thirty (30) years imprisonment on the Attempted Burglary charge.

SCANNED

A timely Notice of Appeal was filed and an appeal was perfected. Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's conviction, plea and sentences. State v. Mansfield, Op. No. 3247 (S.C. Ct. App. filed October 2, 2000). The Remittitur was issued October 18, 2000.

Applicant filed an application for Post-Conviction Relief (PCR) on October 2, 2001 (2001-CP-40-4159). He was represented by Debra Y. Chapman, Esquire on the action. The Honorable L. Casey Manning denied and dismissed the application with prejudice by order filed September 24, 2003. A Notice of Appeal was filed and a Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court. By order received by the Richland County Clerk on April 4, 2005, the South Carolina Supreme Court denied the Petition for Writ of Certiorari and dismissed the appeal. The Remittitur was received by Respondent on April 4, 2005.

Applicant thereafter filed a second application for PCR on February 1, 2008 (2008-CP-40-0779). The State made a Return and Motion to Dismiss on October 13, 2008, after which the Court entered a Conditional Order of Dismissal on October 17, 2008, provisionally dismissing the application while giving Applicant twenty (20) days to submit his objections. After receiving and reviewing Applicant's responses to the Conditional Order, the Court entered a Final Order dismissing the application with prejudice on September 21, 2010. Applicant filed a Notice of Appeal, which was dismissed by the Court on November 17, 2010. The current application followed.

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or the

Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

### Findings of Fact and Conclusions of Law

#### Timeliness – S.C. Code §17-27-45(a)

This Court agrees with the Respondent that this Application for Post-Conviction Relief should 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.

S.C. Code Ann. §17-27-45(a) reads 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 upon an appeal, whichever is later.

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). For the purposes of this Order, the Applicant's conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. October 18, 2000. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCPC means that this PCR application had to be filed by October 19, 2001. This Application was filed on March 22, 2011, which was well beyond the time that the statutory filing period had expired.

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, 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." Therefore, this Court shall summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

#### **SUCCESSIVE**

This PCR application must also be summarily dismissed as it is also successive in nature. Successive applications for post-conviction relief are disfavored. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 point to 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." [Emphasis in original]. Id., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

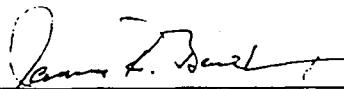
The Applicant could have raised the new grounds for relief in his prior post-conviction relief application(s). The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel. (Aice v. State, 409 S.E.2d 392 (1991). Even a belated direct appeal claim is subject to limitations. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008)(Petitioner was barred from raising in successive post-conviction relief (PCR) application claim that he was denied the right to direct appeal due to the ineffective assistance of counsel, where claim could have been raised in first PCR application).

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The

Applicant is granted thirty (30) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General  
Robert D. Corney  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 11 day of April, 2012.



The Honorable James R. Barber, III  
Administrative Judge  
Fifth Judicial Circuit

Columbia

South Carolina