

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Shellra Mance, # 297248,

2013-CP-42-1360

Applicant,

v.

**CONDITIONAL
ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter is before the Court from an application for post-conviction relief filed March 18, 2013. The Respondent made its Return and requested the application be dismissed because it is successive; and for failure to file within the time mandated by the statute of limitations. This order follows.

PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Correction pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2003 term of the Spartanburg County Grand Jury for homicide by child abuse, homicide by child neglect, unlawful neglect by legal custodian, assault and battery of a high and aggravated nature (ABHAN), and unlawful neglect by legal custodian (2003-GS-42-0548). She was represented by Clay Allen, Esquire. On October 20-22, 2002, Applicant proceeded to trial by jury and was convicted of homicide by child abuse, ABHAN, and unlawful neglect by legal custodian. She was sentenced by the Honorable J. Michael Baxley to confinement for a period of life for homicide by child abuse, ten (10) years for ABHAN, and ten (10) years for unlawful neglect by legal custodian. The sentences were set to run concurrently with one another.

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2015 AUG 31 AM 11:43
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A timely Notice of Appeal was filed on Applicant's behalf and an appeal pursuant to Anders¹ was perfected by Joseph Savitz, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in a written opinion. State v. Mance, Op. No. 2006-UP-063 (S.C. Ct. App. filed January 26, 2006). The remittitur was issued on February 13, 2006.

First PCR Application: 2006-CP-42-1108

In her first application for post-conviction relief, filed March 30, 2006, Applicant alleged she was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Subject matter jurisdiction;
3. Doubt jeopardy;
4. Proximate cause of death; and
5. Constitutional violations which include trial judge error.

The State made its Return on or about September 12, 2006. An evidentiary hearing into the matter was convened on December 7, 2006, at the Spartanburg County Courthouse, before the Honorable J. Derham Cole. Applicant was present and represented by John G. Reckenbeil, Esquire. The State was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. In a written Order, dated July 30, 2007, and filed July 31, 2007, Judge Cole denied Applicant's application and dismissed the matter with prejudice. Applicant did not appeal.

Current PCR Application

In her second and current application for post-conviction relief, filed March 18, 2013, Applicant alleges, through counsel, that she is being held in custody unlawfully for the following reasons:

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¹ Anders v. California, 286 U.S. 738 (1967).

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1. Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution.
 - a. Trial counsel did not investigate, develop, and present mitigation during Applicant's sentencing hearing. Applicant was prejudiced because, had trial counsel done so, then she would not have been sentenced to life imprisonment.
 - b. Trial counsel did not adequately advise Applicant about the strength of the State's case against her. She proceeded to trial without understanding the law or facts. Had she been properly advised, then she would have pled guilty and presented evidence to mitigate the sentence. Missouri v. Frye, 132 S. Ct. 1399, 1408 (2012); Lafler v. Cooper, 132 S. Ct. 1376, 1391 (2012).
2. Applicant was entitled to effective assistance of counsel during her first opportunity for the court to review allegations of ineffective assistance of counsel. *See* Case Number 2006-CP-42-1108. This successive PCR affords the State an opportunity to allow applicant to present these claims. Martinez v. Ryan, 132 S. Ct. 1309, 182 L.Ed.2d 272 (2012). See also S.C. Code § 17-27-45(b) (extending the PCR statute of limitations by one year for binding constitutional decisions); Franklin v. Maynard, 356 S.C. 276, 588 S.E.2d 604 (2003) (holding S.C. Code § 17-27-45(b) is proper procedure for challenging death sentence imposed prior to Atkins v. Virginia, 536 U.S. 304 (2002)).
 - a. Applicant's PCR counsel did not conduct an investigation, advise Applicant about amending her PCR application, or file an amended PCR application. Applicant was prejudiced, because, had PCR counsel done so, then counsel would have discovered mitigating evidence, developed such evidence, amended the PCR application, and presented it during the evidentiary hearing.
 - b. PCR counsel did not explain the strength of the State's case against Applicant and advise applicant that her trial counsel was ineffective for not advising her to plead guilty and present evidence to mitigate the punishment.

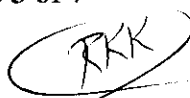
Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions, appellate records from the South Carolina Department of Corrections, records from Applicant's prior PCR proceedings, and Respondent's Return and Motion to Dismiss.

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FINDINGS OF FACT AND CONCLUSION OF LAW

Successiveness

This Court finds this current PCR application must be summarily dismissed because it is successive to her 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 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, 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 733 (1980).

Applicant's contention that she received ineffective assistance of counsel in her prior post-conviction relief application is neither an independent ground for relief nor a sufficient reason to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief

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2015 AUG 31 AM 8:13
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actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of her original application, including an appeal, she may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, “Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” Id. at 451, 409 S.E.2d at 395. Aice further held that “the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394. Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. Accordingly, this Court finds that Applicant has failed to show that she is entitled to file a successive PCR application and this application must be dismissed.

Statute of Limitations

This Court finds, further, that this Application for Post-Conviction Relief 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. Under the applicable statute,

[a]n 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.

§ 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

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2015 AUG 31 AM 8:43
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(1996). Following Applicant's conviction and unsuccessful appeal, the Remittitur was issued on February 13, 2006. Therefore, Applicant was required to file this application on or before February 14, 2007. This Application was filed March 18, 2013, which was well after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, Courts are authorized 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." § 17-27-70(c). Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute.

Martinez v. Ryan

Applicant argues that Martinez v. Ryan, 132 S.Ct. 1309 (2012), entitles her to have the Court examine her 1991 and 1993 convictions and her prior PCR counsel's conduct regarding her prior convictions. This Court finds that Martinez has no bearing on Applicant's ability to raise ineffective assistance of counsel claims in a subsequent, successive PCR application filed in the circuit courts of this state. Rather, in Martinez, the United States Supreme Court held that "[w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013) (quoting Martinez, 132 S.Ct. at 1320). Concerning state court, however, the Supreme Court of South Carolina has recognized that "the holding in

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Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Id. Consequently, Applicant's contention that she received ineffective assistance of prior PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application. See Id. Accordingly, this allegation must be summarily dismissed.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons she may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Patrick L. Schmeckpeper, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

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AND IT IS SO ORDERED this 28 day of August, 2015.

R. Keith Kelly
R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit Court

Gaffney, South Carolina

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

September 1, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Sheelma Mance # 201248

Applicant

7TH JUDICIAL CIRCUIT

CASE # 2013-CP-42-1360

VS
State
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Additional Ord. Dismissal
In this action dated 8-28 2015 on 9-1-15

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Orkley Hancock
Ernest Wrose

9-1-15
(Date)

Carrie Seay
(Signature)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 SHELLRA MANCE, #297248)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 CASE NO.: 2013-CP-42-1360

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: E. Charles Grose, Jr., Bar No. _____ Address: 404 Main Street Greenwood SC 29646 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Patrick L. Schmeckpeper, Bar No. _____ Address: PO Box 11549 Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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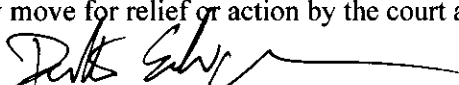
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

August 19, 2015
 Date submitted

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SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____



ALAN WILSON
ATTORNEY GENERAL

August 19, 2015

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The Honorable R. Keith Kelly
Chief Administrative Judge-CP, 7th Circuit
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: Shellra Mance, #297248 v. State of South Carolina
2013-CP-42-1360

Dear Judge Kelly:

Enclosed please find the original proposed **Conditional Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign and forward to the Clerk's office in the enclosed addressed envelope and have her serve the order on all parties. If you have any questions, please feel free to contact me.

Sincerely,

Patrick L. Schmeckpeper
Assistant Attorney General

PLS/ah
Enclosure(s)

cc: E. Charles Grose, Jr., Esquire