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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Phillip Mitchell, #328422

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)
)
) Case No.: 2019-CP-42-02044
)
)
) FINAL ORDER OF DISMISSAL
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SPARTANBURG COUNTY
AMY W. COX

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This matter comes before the Court pursuant to a post-conviction relief application filed by Applicant Phillip Mitchell on June 5, 2019. Respondent moved to summarily dismiss the application on August 12, 2019, because the allegations regarding subject matter jurisdiction are without merit as a matter of law, and because the application is untimely, successive, and barred by the doctrine of laches.

Pursuant to this request, and after reviewing the attached pleadings pertinent to this matter, this Court issued a conditional order of dismissal dated August 16, 2019, provisionally summarily dismissing the application, but affording the applicant twenty days from service of the conditional order to provide sufficient reasons as to why this order should not become final. Applicant was personally served with this conditional order of dismissal on September 6, 2019, as evidenced by the attached affidavit of personal service.

On September 13, 2019, Applicant filed his "reply to [the] conditional order of dismissal." In the response, he stated that the court did not have subject matter jurisdiction over the plea hearing or original PCR hearing because the plea and PCR hearings were held at "unauthorized time[s]" and the underlying indictment was deficient. Applicant claims he was never told he had the right against self-incrimination and did not raise this issue in his first action

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because PCR Counsel did not file an amendment and Applicant was allegedly unaware of this issue until he received the plea transcript "late". Applicant claims the Court failed to tell him he had the right against self-incrimination and Counsel was ineffective for failure to withdraw the plea or advise Applicant to withdraw the plea. Applicant claimed Counsel did not help him enough or sufficiently investigate the case. Applicant claims the statute of limitations and bars due to successiveness do not apply to claims regarding jurisdiction, that it does not apply because his first PCR action is "null and void", and that claims regarding procedural irregularities were untimely.

This Court has reviewed the response in full and finds it is not sufficient enough to warrant an evidentiary hearing. Consequently, this Court finds this application must be summarily dismissed with prejudice.

In Applicant's PCR application and subsequent filing, Applicant's claims concerning lack of subject matter jurisdiction remain without merit. As previously stated, the circuit court had jurisdiction to oversee the plea hearing. Applicant's PCR hearing was presided over by Judge Seals during a term of court designated for PCR hearings. Applicant was given his "one bite at the apple" through both the first PCR action and the appeal therefrom. Applicant has failed to specifically articulate why this was insufficient or specifically why the indictments and prior actions were insufficient. Thus, the subject matter jurisdiction allegations raised remain without merit as a matter of law.

Additionally, this Court finds that the application is barred through the statute of limitations. Applicant was convicted on May 20, 2008, and the remittitur from his direct appeal issued on December 30, 2008. Thus, his PCR application was due on December 31, 2009. The current application was not filed until June 5, 2019. Applicant has failed to sufficiently explain

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the nearly ten year delay between the remittitur of his appeal and this pursuit of remedy through the PCR process. Thus, the Court shall dismiss the matter as barred by the statute of limitations.

Additionally, Applicant failed to show why the doctrine of *laches* is inapplicable to his case. Nearly eleven have passed between when the remittitur of Applicant's direct appeal was issued and when he brought a PCR action. Applicant has offered no justification for the delay. Thus, the Court shall summarily dismiss the application as barred by the doctrine of *laches*.

Further, Applicant's application is barred on successiveness grounds. Applicant's current allegations were or could have been raised in Applicant's prior PCR action and Applicant has not sufficiently proven why these issues could not have been raised earlier. Thus, the current application is successive and barred.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, consequently, is not entitled to an evidentiary hearing. Thus, the Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because the allegations regarding subject matter jurisdiction are without merit as a matter of law, and because the application is untimely, successive, and barred by the doctrine of *laches*. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's conditional order of dismissal, the PCR application is denied and dismissed with prejudice.

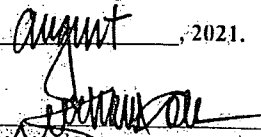
This court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. *See* Rule 203, SCACR.

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Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 30 day of August, 2021.


J. DERIAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

CA

_____, South Carolina

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