

The STATE OF South Carolina
In The Supreme Court

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NOV 12 2021

S.C. SUPREME COURT

APPEAL From Lexington County

Court of Common Pleas
Honorable Walton J. McLeod, Chief Admin. Judge

Case Number 2020-CP-32-0090

Darrell Burgess ————— APPELLANT,
S.C.D.C. # 265544

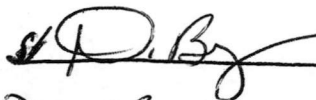
v.

THE STATE OF South Carolina ————— Respondent.

Notice of Appeal

Darrell Burgess appeals the denial of his Application for Post-Post Conviction Relief hearing. The Order dismissing the Application was imposed and signed by the Honorable Walton J. McLeod, October 7, 2021, which APPELLANT received on November 3, 2021.

Other Counsel of Record
Lillian L. Meadows,
Assistant Attorney General


Darrell Burgess
Lee Corr. Inst.
990 Wisacky Hwy
Bishopville, S.C. 29010

Darrell Burgess 265544

v.

STATE OF South Carolina

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S.C. SUPREME COURT

Pursuant to SCACR 243(c) Appellant makes this Court aware that the denial of his Application for a hearing for Post Conviction Relief was improper. The decision by the Honorable Judge was improper because the STATE alleged to the Court in their Conditional order of dismissal and Proposed Final Order of dismissal that Appellant raised Claims of Ineffective ASSISTANCE OF Post Conviction Relief Counsel and Ineffective ASSISTANCE OF APPELLATE Counsel of Post Conviction Relief, when in fact he did NOT. Had the Honorable Judge read Appellant's response to the STATE'S Conditional Order of Dismissal, he would have determined such. Appellant raised the claim that he did NOT knowingly and intelligently waive his right to (APPELLATE) Review of Previous P.G.R. Order which has NO STATUTE OF LIMITATIONS and CANNOT be barred by the STATUTE OF LIMITATION. Also the STATE could NOT ask the Court, RATHER the Court could NOT deny a hearing be held on the claim

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Alleging Denial of Due Process based on the failure of the STATE to serve notice of intent to seek LWOP sentence because it is Jurisdictional and thus cannot be barred by the Statute of Limitation or Res Judicata or any other bar. Further, Appellant is imprisoned under an illegal sentence and the STATE is attempting to stop any court from hearing the matter.

When considering the State's motion for Summary Dismissal of an Application for PCR, a judge must assume facts presented by an Applicant are true and view those facts ~~most~~ in light most favorable to (Appellant). Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002)

According to S. Carolina law, a Post Conviction Relief Applicant is entitled to an appeal if the judge affirmatively finds either (1) the Applicant requested and was denied an opportunity to seek Appellate review; or (2) the right to Appellate review of a previous PCR order was not knowingly and intelligently waived. Code 1976 § 17-27-90; Rules Civ. Proc. 71.1(g). See

King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992). The Statute of Limitations does not apply. According to S.C. Law, Austin Appeals do not have to be filed within one year Statute of Limitations because they are belated Appeals intended to correct unjust procedural defects. Odom v. State ~~308 S.C. 348, 417 S.E.2d 868 (1992)~~

This was the law Appellant ~~308 S.C. 348, 417 S.E.2d 868 (1992)~~ submitted in his response to the State's Motion to dismiss his quest for PCR to the court along with the facts backing up his claims. Post Conviction Relief Counsel and Appellate Counsel's lack of action(s) were just facts to back up

the Claim that Appellant Did not knowingly and intelligently
Waive right to Appellate Review of Previous PCR order, Appellant
placed those facts in Section 11(a) of his PCR Application,
The Honorable Judge Clearly Erred in his decision to deny
ME a hearing, See ES: Wilson v. STATE 348 S.C. 215, 559 S.E.2d 581
(2002).

DATE: NOV. 4 2021

5/ D. By

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Darrell Burgess, SCDC #265544

Case No. 2020-CP-32-0090

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Darrell Burgess (Applicant) on January 8, 2020.¹ The State (Respondent) made its return on December 22, 2020, contending that this action must be summarily dismissed based on the expiration of the statute of limitations set forth in S.C. Code Ann. § 17-27-45(A) of the Uniform Post-Conviction Procedure Act, it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; it fails to state a cognizable claim upon which relief can be granted; and because continued litigation by Applicant frustrates the need for finality of litigation.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a conditional order of dismissal filed January 7, 2021, provisionally denying and dismissing this action. This Court gave Applicant twenty days from the date of service to respond showing why the dismissal should not become final. The Applicant was served with the conditional order of dismissal on September 13, 2021.

¹ In its return, the State indicated it did not receive notice the application had been filed until July 8, 2020.

On January 28, 2021, Applicant filed a response in opposition to the conditional order of dismissal, raising claims of ineffective assistance of trial counsel, Post-Conviction Relief, and ineffective assistance of PCR appellate counsel.

As discussed in the conditional order, Applicant's contention he received ineffective assistance of PCR counsel in his prior PCR action is not a cognizable claim for proceeding with the merits of a successive application. Our Supreme Court has held that once a post-conviction relief 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 post-conviction relief counsel. *See, e.g., Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991).

Here, Applicant received a hearing in his first post-conviction relief action and timely appealed to the South Carolina Supreme Court. After careful consideration of the record and review of the Applicant's filing of the petition for writ of certiorari and the State's return to the petition, the Supreme Court dismissed Applicant's appeal. Accordingly, Applicant was afforded a complete adjudication on the merits of his original application for this claim.

Under the doctrine of *res judicata*, a matter that has been wholly adjudicated by a competent court is barred from further pursuit on any grounds that could have been raised in the former action. Here, Applicant is alleging that trial counsel was ineffective in properly preserving issues for appellate review. This matter was raised and adjudicated in Applicant's initial motion for post-conviction relief, Applicant's post-conviction relief appeal, and in Applicant's federal habeas corpus action. The Applicant's petition for habeas corpus relief in federal court was previously denied. Additionally, Applicant has litigated two previous PCR applications in the circuit court. Because of the similarities in the actions pursued in Applicant's first PCR action and petition for habeas corpus relief, this Court finds Applicant's claims of ineffective assistance of

trial counsel are barred by the doctrine of *res judicata* because they were or could have been raised in Applicant's previous state and federal proceedings.


Before the court will hold an evidentiary hearing, Applicant must establish a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Upon review of Applicant's application, this Court finds he has failed to state a cognizable claim upon which relief can be granted, and therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds an evidentiary hearing is not warranted. This Court finds no reason why the conditional order of dismissal should not become final.

This Court therefore reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; Applicant failed to state a cognizable claim upon which relief can be granted; and because continued litigation by Applicant frustrates the need for finality of litigation.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant 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. 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


Walton J. McLeod, IV
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina

October 7, 2021