

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
)
 Curtis Harris, #324605)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE FIFTH JUDICIAL CIRCUIT

2021-CP-40-2854

**CONDITIONAL ORDER OF
 DISMISSAL**

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 RICHLAND COUNTY
 FILED
 C.O. G.S. & E.O.

This matter comes before the Court by way of Applicant Curtis Harris’s application for post-conviction relief (PCR) filed on June 14, 2021. Respondent made its return and motion to dismiss on August 13, 2021. The Court grants Respondent’s motion to dismiss because the action is untimely, successive, and fails to state a cognizable claim for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the August 2005 term, the Richland County Grand Jury indicted Applicant for murder (2005-GS-40-6549) and armed robbery (2005-GS-40-6548). Christopher Hart, Esquire, represented Applicant.

Applicant pled guilty as indicted on October 17, 2007, before the Honorable G. Thomas Cooper Jr. Judge Cooper sentenced Applicant to thirty years imprisonment for armed robbery, and forty-five years imprisonment for murder, to be served concurrently. Applicant did not appeal.

i. First PCR Action and Subsequent Appeal (2008-CP-40-6031)

Applicant subsequently filed an application for PCR on August 19, 2008, in which he alleged the following grounds for relief:

1. “Ineffective Assistance of Counsel”

- a. “Counsel failure to do a pretrial investigation into whether a Blair hearing was n[sic].”
2. “Plea was not made voluntary”
 - a. “Counsel didn’t inform applicant of the consequences of his plea”
3. “Subject matter jurisdiction”
 - a. Counsel [sic] applicant to plead to a charge for which he wasn’t indicted fo.”

Respondent made its return on March 21, 2009. An evidentiary hearing into the matter was convened on January 15, 2010, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Jeremy Thompson, Esquire. On May 5, 2010, the Honorable L. Casey Manning, issued the order of dismissal denying Applicant’s application for post-conviction relief, finding no constitutional violations or deprivations which would require granting Applicant relief. Applicant then filed a Rule 59(e) Motion to Alter or Amend Judgment which Judge Manning denied by written order dated August 3, 2010.

Thereafter, Appellate Defender LaNelle C. DuRant filed a *Johnson*¹ petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. On June 8, 2012, by written order the South Carolina Court Supreme Court denied the petition. The Remittitur was issued on June 27, 2012.

I. CURRENT APPLICATION

In his second and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Circuit Court lacked subject matter jurisdiction:
 - a. “Applicant was convicted and committed in family court to the Department of Juvenile Justice (“DJJ”) not to exceed his 21st birthday in 2003 when the Applicant was 14 years old. He was housed ad John G. Richard’s institution until he was granted parole in 2005, 5 months before his 17th birthday. While on parole, Applicant committed these alleged offenses on his 17th birthday July 7, 2005. Applicant was still under the exclusive jurisdiction of the family court at the time of these offenses. There was no waiver-

¹ Pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

hearing pursuant to *Kent v. United States* nor is there any record that the family court transferred its jurisdiction to the circuit court. Applicant believes it was in his best interest to remain under the jurisdiction of the family court to seek mental treatment and judgment for these alleged crimes.”

For purposes of this Conditional Order of Dismissal, the Court incorporates the Richland County Clerk of Court records regarding Applicant’s conviction, Applicant’s SCDC records, the plea transcript, the records from Applicant’s prior PCR action and subsequent appeal, and the records of this PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

The Court finds that this PCR shall 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. Specifically, the act requires as follows:

(A) 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.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held 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). 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). Additionally, S.C. Code Ann. § 17-27-70(c) 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.”

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations the court lacked subject matter jurisdiction. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant plead guilty on October 17, 2007, and did not pursue a direct appeal. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before October 18, 2008. Applicant did not file his application until June 14, 2021, well beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant’s current PCR application as he alleges no

new rights to be applied retroactively, and raised no allegations of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and shall be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successive Applications

The Court further finds the application must be summarily dismissed because it is successive to Applicant's 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 earlier 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.

Pursuant to section 17-27-90, successive PCR actions are barred 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). 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." *Id.* 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, "[f]inality 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. 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 735 (1980).

This Court finds Applicant’s current allegations concerning subject matter jurisdiction were or could have been raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under section 17-27-90 of the South Carolina Code. Applicant has failed to establish any sufficient reason why he could not have raised his current allegation in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant’s previous post-conviction application.

Subject Matter Jurisdiction

This Court finds Applicant’s allegations regarding jurisdiction are without merit. “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Applicant’s claim that the circuit court lacked jurisdiction at the time of his adjudication because the family court did not waive exclusive jurisdiction over his offenses is incorrect. Per Applicant’s own admission, he was indicted in 2005 for offenses committed on his seventeenth birthday. At the time of Applicant’s adjudication, the version of the Juvenile Justice Code applicable to his matters was codified at S.C. Code Ann. § 20-7-6600. Effective 2005, the code defined “child” or as “a person less than seventeen years of age.” S.C. Code Ann. § 6605(1). Applicant acknowledged he committed the offenses on his seventeenth birthday; as such, he did not fall under the statutory definition of a “child” for adjudication of his

offenses in family court when he was charged. Moreover, section 20-7-7605(1) of the statute provided that circuit courts were required to transfer jurisdiction to the family court *only* when then the accused was under the age of seventeen. (Emphasis added). Accordingly, individuals who were seventeen and older were automatically waived into the circuit court's jurisdiction without obtaining transfers as they were excluded from the definition of a "child" under the 2005 version of the Code. Therefore, Applicant's allegations regarding jurisdiction, and every part of the application based thereupon, fail as a matter of law, and shall be dismissed pursuant to Rule 12(b)(6), SCRCP.

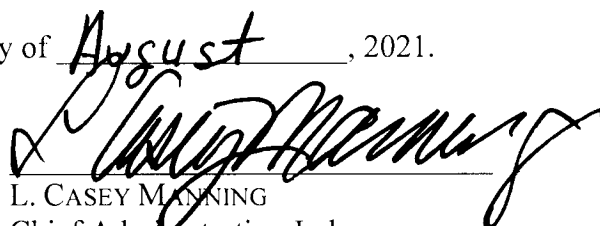
CONCLUSION

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

Office of the Attorney General
Yasmeen E. Klein, Assistant Attorney General
PCR Division – Fifth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 17 day of August, 2021.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina