

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
))
Randolph Ashford, #256638)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

2021-CP-40-2211

**CONDITIONAL ORDER OF
DISMISSAL**

RICHLAND COUNTY
FILED
2021 AUG 17 PM 2:36
COURT CLERK, ETC.

This matter comes before the Court by way of Applicant Randolph Ashford’s application for post-conviction relief (PCR) filed on May 11, 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 April 2007 term, the Richland County Grand Jury indicted Applicant for kidnapping (2007-GS-40-1938), two counts of assault and battery with intent to kill (ABWIK) (2007-GS-40-1939; -1941), ABHAN with the lesser included of first degree criminal sexual conduct (2007-GS-40-1940), and first-degree burglary (2007-GS-40-2048). Applicant was additionally indicted during the May 2007 term for three counts of carjacking (2007-GS-40-2000; -2001; -2002) and kidnapping (2007-GS-40-2003). Deon S. O’Neil and Nicole Singletary, Esquires, represented Applicant. Assistant Solicitor Kathryn Luck Campbell and Will Bryant of the Fifth Circuit Solicitors Office prosecuted the case.

Applicant proceeded to trial March 31 - April 3, 2009, before the Honorable G. Thomas Cooper Jr., and a jury. The jury found Applicant guilty as indicted and Judge Cooper sentenced

Applicant to a term of imprisonment of twenty years for each count of kidnapping, ten years for each count of ABWIK, ten years for ABHAN and first-degree criminal sexual conduct, and ten years for each count of carjacking, to run concurrently. Applicant was additionally sentenced to twenty years for first-degree burglary, to run consecutive to the two counts of kidnapping. By order dated April 9, 2009, Judge Cooper clarified the sentence reflects an aggregate total of forty years' imprisonment.

Applicant appealed and an *Anders*¹ brief was submitted on Applicant's behalf by the South Carolina Office of Appellate Defense. The Court of Appeals dismissed the appeal by order dated January 25, 2012. *State v. Ashford*, 2012-UP-035 (S.C. Ct. App. filed January 25, 2012). The remittitur was issued February 15, 2012.

i. First PCR Action and Subsequent Appeal (2012-CP-40-1053)

Applicant subsequently filed an application for PCR on February 6, 2012, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Trial Counsel
 - a. Trial Counsel failed to object to improper jury instructions
 - b. Trial Counsel failed to examine all the evidence prior to trial
 - c. Trial Counsel failed to impeach state witnesses
 - d. Trial Counsel failed to pursue leads provided by the defendant prior and during trial
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to present on appeal an issue concerning the Solicitor's withholding evidence that the defendant requested
 - b. Failure to obtain defendant's discovery and/or the 911 tape, or to include the tape as part of the record on appeal
3. Prosecutorial Misconduct
 - a. Misconduct during closing arguments
 - b. Solicitor withheld evidence favorable to the defendant
 - c. Solicitor vouched for the credibility of the state's witnesses

¹ *Anders v. California*, 386 U.S. 738 (1967).

Respondent submitted its return on April 30, 2012. An evidentiary hearing into the matter was convened on March 31, 2015, at the Richland County Courthouse. Applicant was present at the hearing and was represented by David Belding, Esquire. On November 19, 2015, the Honorable Brooks Goldsmith issued the order of dismissal denying Applicant's application for post-conviction relief with prejudice, finding no constitutional violations or deprivations for which Applicant was entitled to relief.

On October 26, 2016, Deputy Chief Appellate Defender Wanda H. Carter filed a *Johnson*² petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Applicant additionally filed a *pro se* petition for certiorari raising additional issues. On February 28, 2018, by written order the Court of Appeals denied the petition. The Remittitur was issued on March 16, 2018.

ii. DNA Testing Application and Appeal

During the pendency of his PCR action, Applicant initiated an application for DNA testing. The State filed a response in opposition, arguing that Applicant did not meet the PCR DNA Testing and Preservation of Evidence requirements and because his identity was not at issue at trial. After a hearing before the Honorable Robert Hood on January 5, 2015, Applicant's application was denied. At the hearing, Applicant was represented by PCR Counsel David Belding. Applicant appealed the denial with a *Johnson* petition for writ of certiorari submitted on his behalf by the South Carolina Office of Appellate Defense. The Court of Appeals denied certiorari to review the circuit court's dismissal of the application for DNA testing. *Ashford v. State*, Appellate Case No. 2015-001268 (S.C. Ct. App. filed November 18, 2018). The remittitur in this action was issued on December 6, 2016.

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

iii. Habeas Corpus Action (0:18-1262-JFA-PJG)

Applicant subsequently filed a *pro se* petition for habeas corpus under 28 U.S.C. § 2254, raising seven grounds for relief. Respondent filed its return and motion for summary judgment on August 21, 2018. The Honorable Paige J. Gossett, United States Magistrate Judge, issued the report and recommendation on January 4, 2019, recommending the Respondent's motion for summary judgment be granted and Applicant's petition denied. On March 29, 2019, the Honorable Joseph F. Anderson Jr., United States District Judge, accepted the report and recommendation granting Respondent's motion for summary judgment and denying Applicant's petition. *Ashford v. Stephan*, No. CV 0:18-1262-JFA, 2019 WL 1416874 (D.S.C. Mar. 29, 2019). Applicant appealed the decision and the United States Court of Appeals for the Fourth Circuit dismissed the appeal and denied a certificate of appealability on October 25, 2019. *Ashford v. Stephan*, 781 F. App'x 275 (4th Cir. 2019). Thereafter, Applicant petitioned the United States Supreme Court for certiorari, which the Court denied on October 5, 2020. *Ashford v. Stephan*, 141 S. Ct. 334, 208 L. Ed. 2d 72 (2020).

CURRENT APPLICATION

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

1. "Lack of Subject Matter Jurisdiction;"
2. "Invalid Amendment;"
 - a. "Failure to reindict following not guilty verdict and/or invalid amendment that change the indicted offense"

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, Applicants appellate records, the records from Applicant's prior PCR action and subsequent

appeal, the records from Applicant's prior federal habeas corpus action, 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 of subject matter jurisdiction and indictment issues. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted and sentenced on April 3, 2009 and pursued a direct appeal. The remittitur issued February 15, 2012. Pursuant to section 17-27-45(A), Applicant needed file his application for post-conviction relief on or before February 16, 2013. Applicant did not file this application until May 11, 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 has not satisfied a showing 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 were or could have been raised in the proceedings based on Applicant's prior action for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application 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 action.

Subject Matter Jurisdiction

This Court finds Applicant's allegations regarding jurisdiction are without merit. Applicant's claim of an "invalid amendment" that changed the indicted offense, and failure to re-indict, are not claims that the court lacked subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (clarifying that the concepts of subject matter jurisdiction and sufficiency of an indictment are distinct). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. Further, a circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment." *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)).

In this case, despite Applicant's allegations against the indictments, the records reflect that the Richland County Grand Jury validly indicted Applicant. These indictments contain all the necessary elements of the offenses, and further cites the applicable statute. Further, "[a]n

indictment is merely a notice document.” *State v. Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing *Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)). A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986).

Here, Applicant cannot show any irregularity, because the indictments in question are sufficient on their face. Moreover, “an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” *Id.* at 63, 700 S.E.2d at 443 (citing *State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007.)) In order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003). Therefore, Applicant’s allegations regarding jurisdiction, and every part of the application based thereupon, fails as a matter of law. For these reasons and pursuant to Rule 12(b)(6), SCRPC, this Court shall dismiss the application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

CONCLUSION

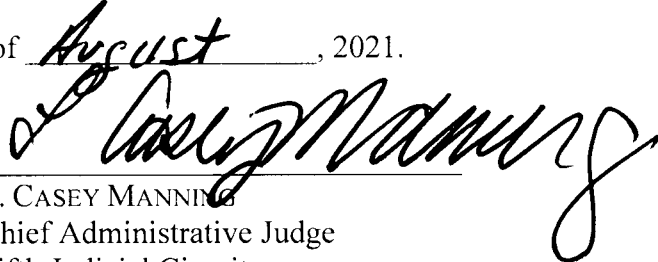
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order 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
Yasmeeen 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