

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Stephen Corley, SCDC # 347938,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2021-CP-02-0746

CONDITIONAL ORDER OF DISMISSAL

FILED 5-26 2021 9:21
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

This matter is before the Court based on a successive, fourth application for post-conviction relief filed by Applicant Stephen Corley on April 13, 2021. In response, Respondent the State of South Carolina made its return and moved to summarily dismiss the action as procedurally barred as successive and untimely pursuant to the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed as untimely and successive and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined within the South Carolina Department of Corrections. Applicant was indicted during the May 2013 term of the Aiken County Grand Jury for two counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol (2011-GS-02-0636, -0637) and two counts of Reckless Homicide (2011-GS-02-638, -369), stemming from a fatal car crash on the evening of December 29, 2010, wherein Applicant drove his vehicle into oncoming traffic, striking and killing two occupants of another vehicle. Later investigation revealed Applicant admitted he was under the influence of alcohol and had a blood alcohol content of .133 over two hours after the accident.

Applicant retained Fred Wallace Woods, Jr., Esquire, to represent him on these charges.

Second Circuit Solicitor J. Strom Thurmond, Jr. prosecuted the case. On September 21, 2011, Applicant appeared before the Honorable William H Seals, Jr., circuit court judge, where he pled guilty as indicted to both counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol; the two related Reckless Homicide charges were dismissed pursuant to plea negotiations with the State. Applicant acknowledged during the plea that he understood there were no negotiations or recommendations from the State regarding sentencing and that he could receive up to fifty years imprisonment. Judge Seals sentenced Applicant to two consecutive terms of twenty-two years imprisonment for an aggregate sentence of forty-four years imprisonment. Applicant did not appeal his guilty plea or sentences.

Initial Post-Conviction Relief Action (2012-CP-02-0471) and Subsequent Appeal

Applicant filed his first application for post-conviction relief on February 27, 2012, alleging that he was being held in custody unlawfully based on the allegations:

1. Ineffective assistance of counsel
 - a. Failure to file appeal
 - b. Conflict of interest
 - c. "Counsel failure to investigate"
 - d. "Counsel failed to investigate the crime scene was prejudiced to Mr. Corley's case"
2. Involuntary plea
 - a. "Plea was not entered into with full knowledge of the totality of the circumstances surround the case"

Following the appointment of counsel, Applicant filed a *pro se* amendment to his application on April 17, 2012, where he alleged thirty additional allegations of ineffective assistance of counsel. Respondent made its Return on May 30, 2012, requesting an evidentiary hearing be held. At the evidentiary hearing, Applicant proceeded forward on allegations that counsel was ineffective for failing to conduct a sufficient investigation, failing to file an appeal, and that his guilty plea was involuntary.

An evidentiary hearing was convened on January 23, 2013, before the Honorable Doyet A. Early, III. Applicant was present and represented by Jacqueline F. Busbee, Esquire. Applicant and plea counsel Woods both testified. At the conclusion of the hearing, Judge Early denied and dismissed the application with prejudice. An order of dismissal with specific findings of fact and conclusions of law was filed on March 13, 2013, finding counsel properly investigated the case, counsel properly advised Applicant of his appellate rights and Applicant never requested he file an appeal, and Applicant's guilty plea was knowingly, voluntarily, and intelligently entered.

Applicant filed a timely notice of appeal challenging the denial of relief and was represented on appeal by Appellate Defender Carmen V. Ganjehsani of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant asserted the post-conviction relief court erred in finding his plea was knowing and voluntary based on purported misadvice regarding sentencing and the dismissal of the related charges. On September 11, 2014, the South Carolina Supreme Court denied certiorari. The remittitur was returned to the circuit court on September 29, 2014.

Second Post-Conviction Relief Action (2013-CP-02-2458)

Applicant filed his second application for post-conviction relief on October 29, 2013, while the appeal of his initial post-conviction relief action was still pending. In this second application, Applicant asserted he was entitled to relief to based on allegations of ineffective assistance of counsel, involuntary guilty plea, and newly discovery evidence based on a purported discovery violation of which he failed to provide proof. Respondent moved to dismiss the action as successive to his first post-conviction relief action, untimely, and barred by the doctrine of *res judicata*. By order filed January 6, 2014, the Honorable Edgar W. Dickson, acting in his capacity as Chief Administrative Judge for the Second Judicial Circuit, issued a conditional order of

dismissal, provisionally dismissing the application but allowing Applicant an opportunity to respond and provide sufficient reasons why the dismissal should not become final. Applicant responded, asserting the claims were not raised in his initial post-conviction relief action because the claims were either based on different facts or inadequately raised in his initial post-conviction relief proceeding. After reviewing the pleadings and Applicant's response, Judge Dickson issued a final order of dismissal, reaffirming that the application must be summarily dismissed as successive and untimely; this order was filed on May 28, 2014. Applicant did not appeal this summary dismissal.

Third Post-Conviction Relief Action (2014-CP-02-0680)

Applicant filed his third application for post-conviction relief on March 21, 2014, while his second post-conviction relief action was still pending. In this third application, Applicant asserted he was entitled to relief on the same grounds as raised in his second application. Respondent moved to dismiss the action as successive to his first post-conviction relief action, untimely, and barred by the doctrine of *res judicata*. By order filed September 8, 2014, Judge Dickson, acting in his capacity as Chief Administrative Judge for the Second Judicial Circuit, issued a conditional order of dismissal, provisionally dismissing the application but allowing Applicant an opportunity to respond and provide sufficient reasons why the dismissal should not become final. Applicant failed to respond to the conditional order of dismissal. Judge Dickson issued a final order of dismissal, reaffirming that the application must be summarily dismissed as successive and untimely; this order was filed on December 5, 2014. Again, Applicant did not appeal this summary dismissal.

Initial Federal Petition for Writ of Habeas Corpus (C/A No.: 0:15-375-RBH-PJG)

Applicant filed a petition for writ of habeas corpus in the United States District Court,

which was delivered to Respondent on January 26, 2015. In this petition, Applicant again asserts that his counsel was ineffective and that his guilty plea was involuntary. In response, Respondent moved for summary judgment. Applicant responded in opposition. On December 2, 2015, United States Magistrate Judge Paige J. Gossett issued a report and recommendation, recommending summary judgment and denial of the petition. Applicant then filed objections to the report and recommendation. By order filed March 2, 2016, United States District Judge Bryan Harwell granted summary judgment in favor of Respondent, denied the petition, and denied a certificate of appealability.

Despite Judge Harwell's order denying a certificate of appealability, Applicant nonetheless appealed the dismissal to the United States Court of Appeals for the Fourth Circuit. By unpublished order filed August 30, 2016, the Court of Appeals dismissed the appeal. Applicant petitioned for rehearing, which was also denied.

Applicant then sought certiorari from the United States Supreme Court. On April 24, 2017, the Supreme Court denied certiorari.

Second Federal Petition for Writ of Habeas Corpus (C/A No.: 0:17-1607-RBH-PJG)

Applicant filed a subsequent petition for writ of habeas corpus in the United States District Court, which was served on Respondent on June 12, 2017. Because it was subject to summary dismissal as a successive petition, the court instructed Respondent not to respond. In response, Respondent moved for summary judgment. Applicant responded in opposition. On August 28, 2017, Magistrate Judge Gossett issued a report and recommendation, recommending summary judgment and denial of the petition. By order filed October 3, 2017, Judge Harwell denied the petition and denied a certificate of appealability.

Petition for Habeas Corpus filed in the Circuit Court (2018-CP-02-1988)

Applicant filed a Petition for Writ of Habeas Corpus in the Aiken County Court of Common Pleas on August 22, 2018, asserting “actual factual innocence.” In his Petition, Applicant states his plea, post-conviction relief, and appellate counsel were all ineffective for failing to argue that his sentences violated the Double Jeopardy Clause because the two felony DUI resulting in death indictments and convictions arose out of a single accident.

On July 16, 2020, Applicant filed a motion to amend his habeas corpus petition, raising the following issue: “Did the lower court err by sentencing the Applicant to a sentence[e] that exceeds the statutory maximum allowed by law without a jury hearing all the factors?” In this amendment, he again asserts that his previous counsel were all ineffective for failing to challenge his consecutive sentences on various constitutional and statutory grounds, including a violation of the Double Jeopardy Clause.

Respondent moved to summarily dismiss this action.

CURRENT ACTION BEFORE THE COURT

In his *fourth* application for post-conviction relief, filed on April 13, 2021, Applicant asserts he is entitled to post-conviction relief based on the following grounds:

- Involuntary guilty plea
 - Applicant did not receive discovery prior to plea
 - Applicant suffered with PTSD and depression during plea and prior
- Newly discovered evidence – the missing black box from the truck
- Denial of competency evaluation
- Denial of direct appeal

As requested relief, Applicant states he is seeking a new sentencing hearing.

Respondent made its return to the action and moved to dismiss the application as untimely, successive, and for failure to make a *prima facie* showing of newly discovered evidence.

Attached to Respondent's return and before this Court are Applicant's records from the Aiken County Clerk of Court regarding the subject conviction, Petitioner's records from the South Carolina Department of Corrections, the records from Petitioner's first, second, and third post-conviction relief actions and the subsequent appeal from his first action, the records from Petitioner's federal habeas corpus actions, and the records from his pending circuit court habeas corpus action, and the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Summary Dismissal Based On Successiveness

Respondent moved to summarily dismiss the application because it is successive to Applicant's *three* previous post-conviction relief applications. Applicant previously filed an initial

post-conviction relief action, for which he was appointed an attorney and had a full evidentiary hearing. Then, following the denial of that application, Applicant enjoyed an appeal of that action with the assistance of appointed appellate counsel. Thereafter, he filed two additional post-conviction relief actions, two federal habeas corpus actions in the United States district court, and a petition for writ of habeas corpus in circuit court. This Court finds Applicant cannot proceed forward on *fourth* application based on these grounds, which could and should have been raised in his initial action. Summary dismissal is appropriate.

The Uniform Post-Conviction Procedures Act disfavors successive applications and places 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. S.C. Code Ann. § 17-27-90; Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016) (noting all defendants are entitled to a full and fair opportunity to present claims in one post-conviction relief application and successive PCR applications and appeals are generally disfavored because they allow a defendant to receive more than one bite at the apple); Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004) (noting that state law generally procedurally prohibits a continuance of post-conviction proceedings and submission of successive petitions for post-conviction relief); Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) (noting successive post-conviction relief applications are disfavored and the applicant has the burden to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Section 17-27-90 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.

Section 17-27-90 is clear—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 735 (1980).

The South Carolina Supreme Court held the South Carolina post-conviction relief processes “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, “[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. Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised these claims in his initial application (or the two successive applications that followed). In fact, nearly all of Applicant’s claims were raised in various forms in his prior actions. Applicant has failed to provide any information whatsoever to explain why he could not previously raise these claims.

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.” Accordingly, this Court finds the application should be dismissed as successive to Applicant’s previous PCR applications.

Summary Dismissal Based on the Statute of Limitations

Respondent also moved for summary dismissal of this application 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).

In the present case, Applicant alleges he is entitled to post-conviction relief based on allegations pertaining ineffective assistance of counsel, involuntary guilty plea, and newly

discovered evidence in the form of “missing black box”, however he has failed to explain why he could not have timely raised these claims within one year of his plea and sentencing.

Applicant pled guilty and was sentenced on September 21, 2011 and did not pursue an appeal, and accordingly, must have filed an application challenge the voluntariness of his plea or his counsel’s performance within a year of his plea. He failed to do so, and accordingly, his application is untimely pursuant to Section 17-27-45(A). Additionally, Applicant’s assertions that he entitled to relief based on newly discovered evidence is also untimely, as Applicant has failed to establish he filed this application within one year of the discovery of this purported newly discovered evidence as required pursuant to Section 17-27-45(C).

This application was filed on April 13, 2021, well beyond the statutory filing period. Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Therefore, this Court finds the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Summary Dismissal Based on Failure to Establish Newly Discovery Evidence

Applicant’s assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he is entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Procedures Act states a person may institute a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the application must be filed 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(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Here, Applicant asserts he is entitled to relief based on newly discovered evidence based on a “missing black box.” However, Applicant fails to establish why he could not have ascertained this information at the time of his plea or within one year of his plea based on reasonable diligence. Moreover, Applicant wholly failed to provide any facts or evidence to support this claim. Additionally, Applicant failed to establish that this purported “evidence” would require the vacation of his plea, wherein the evidence presented at his plea clearly and unequivocally established Applicant’s guilt.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. Welch, 246 S.C. 258, 143 S.E.2d 455. Applicant’s current allegations involve “facts” that were or could have been raised in the prior PCR action; thus, the current application is successive and barred by section 17-27-90. Therefore, this Court finds Applicant has failed to meet his burden, and this application should be summarily dismissed as

successive to Applicant's previous PCR action, untimely, and for failing to make a *prima facie* showing on newly discovered evidence.

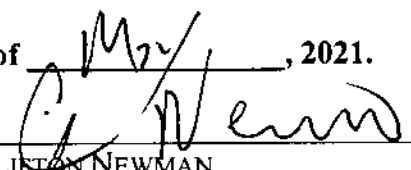
IV. CONCLUSION

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 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 Aiken County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – Megan Harrigan Jameson
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 25th day of May, 2021.


CLINTON NEWMAN
Chief Administrative Judge
Second Judicial Circuit

Aiken, South Carolina