



ALAN WILSON
ATTORNEY GENERAL

June 16, 2021

The Honorable Renee Elvis
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29528-0677

FILED
HORRY COUNTY
2021 JUN 18 P 3:05
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Re: Tyrone Beaty, #191955 v. State of South Carolina
2019-CP-26-05093

Dear Ms. Elvis:

Enclosed please find the original Conditional Order of Dismissal signed by the Honorable Benjamin H. Culbertson, in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

William H. Ray
Assistant Attorney General

WHR/geh

CC: Tyrone Beaty, #191955

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
))
Tyrone Beaty, #191955,)
Applicant,)
))
v.)
))
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-26-05093

CONDITIONAL ORDER OF DISMISSAL

FILED
HORRY COUNTY
2021 JUN 18 2 3:05
RENEE N. LEVINS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Tyrone Beaty on August 9, 2019. Respondent made its return, requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In April 2006, the Horry County Grand Jury indicted Applicant for armed robbery (2006-GS-26-01747) and murder (2006-GS-26-01748). On July 12-16, 2010, Applicant proceeded to trial before the Honorable Steven H. John, circuit court judge, and a jury. G. Scott Bellamy, Esquire represented Applicant. Assistant Solicitor Heather Smith Von Herrmann, Esquire of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On July 16, 2010, Applicant was found guilty as indicted. Judge John sentenced Applicant to thirty-four years' imprisonment for murder and thirty years' imprisonment for armed robbery, sentences running concurrently.

Applicant filed a timely notice of appeal that was perfected by Susan Hackett, Esquire.

The issue raised on appeal was:

1. Did the trial judge err in allowing a police officer to testify that a gunshot wound to the victim's head was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person where the officer was qualified as an

expert for forensic investigation only?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Beaty*, Op. No. 2013-UP-252 (S.C. Ct. App. filed June 19, 2013). The remittitur was issued on July 9, 2013.

First PCR Action: (2011-CP-26-05200)

Applicant filed his first PCR application on June 22, 2010. Respondent made its return and motion to dismiss without prejudice because of the pending appeal on August 11, 2011. The Court granted the motion to dismiss without prejudice, through written order executed by the Honorable Larry B. Hyman, Jr. on September 16, 2011.

Second PCR Action: (2011-P-26-07861)

Applicant filed his second PCR application on September 21, 2011, alleging:

1. Ineffective Assistance of Counsel; and
2. Prosecutorial Misconduct.

Respondent filed a return and motion to dismiss without prejudice because of the pending appeal on December 2, 2011. The order of dismissal, executed by Larry Hyman, Jr., was filed on December 16, 2011.

Third PCR Action: (2013-CP-26-05929)

Applicant subsequently filed his third PCR application on August 28, 2013, alleging:

1. Ineffective assistance of counsel:
 - a. Failure to object to officer's testimony before grand jury.
 - b. Failure to sufficiently argue a directed verdict.
 - c. Failure to properly argue for a new trial.
 - d. Failure to request a charge of lesser included offenses as to both counts.
 - e. Failure to object to the charge on the felony murder doctrine.
 - f. Failure to object to the charge on inferred malice.
 - g. Failure to object to the charge on unanimity of the verdict.
2. Prosecutorial misconduct:
 - a. Solicitor knowingly used perjured testimony.

Respondent made its return on or about June 12, 2014. An evidentiary hearing into the matter was convened on October 29, 2014, at the Horry County Courthouse. Applicant was present at the hearing and was represented by Daniel Selwa, Esquire. Joshua Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On November 16, 2014, the Honorable John C. Hayes, III, presiding judge issued the order of dismissal denying Applicant's PCR application.

A notice of appeal was filed on January 6, 2015. On March 23, 2015, Robert M. Pachak, Esquire filed a petition for writ of certiorari and to be relieved as counsel in the Supreme Court of South Carolina, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). Certiorari was denied on July 23, 2015 and the remittitur was issued on August 10, 2015.

First Habeas Corpus Action: (4:15-3707-RMG-TER)

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code Section 2254 on October 1, 2015. Applicant set forth the following grounds for relief:

1. The trial judge erred in allowing a police officer to testify that a gunshot wound to the [victim's] hand was a defensive wound and could not have occurred while the victim was reaching for a handgun on his person where the officer was qualified as an expert in forensic investigation only.
2. Ineffective assistance of trial counsel.
3. Prosecutorial Misconduct.

Respondent filed its return and motion for summary judgment on January 11, 2016. On March 2, 2016, Magistrate Judge Thomas E. Rogers, III, issued the report and recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. *Beaty v. Warden Leroy Cartledge*, 4:15-cv-3707-RMG-TER, (D.S.C. filed Mar. 21, 2016). Applicant's objection to the report and recommendation was received on March 31, 2016.

On April 1, 2016, the Court Judge adopted the Magistrate's report and recommendation granting Respondent's motion for summary judgement and dismissed Applicant's petition. *Beaty*

v. Warden Leroy Cartledge, 4:15-3707-RMG (D.S.C. filed Apr. 1, 2016). This matter was appealed and subsequently dismissed by the United States Court of Appeals for the Fourth Circuit. *Beaty v. Warden Leroy Cartledge*, Op. No. 2016-6587 (4th Cir. filed Sep. 15, 2016). Applicant filed a petition for rehearing in the Fourth Circuit, which was also denied.

II. Current Action before this Court

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

1. "Counsel was ineffective for failure to do reasonable investigation into the Great Seal not being affixed to the murder and armed robbery offense."

Before this Court are Applicant's Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, the current PCR application, and prior direct appeal, PCR, PCR appeals, and habeas corpus records.

III. 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 based upon the following findings:

The Great Seal

Applicant alleges there is no visible impression of the Great Seal on the Acts he was convicted under and this deficiency entitles him to relief. This is without merit. Our Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is properly passed when ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of

State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. *See Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); *Commr’s of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. *Id.* Moreover, section 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm’n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts Applicant currently challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore,

these laws are enforceable, and Applicant's allegation lacks merit.

Applicant's discovery of the missing Great Seal does not entitle him to relief. This evidence was discoverable prior to trial. By not raising this issue earlier or in his previous application, Applicant waived his right to raise this issue now. Even if it was not waived, the Great Seal is not a valid basis for granting relief. Thus, this allegation shall be dismissed for lack of merit.

Statute of Limitations

The Court finds that this application must 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:

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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that 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, South Carolina Code Annotated Section 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."

Applicant's appeal was dismissed and remittitur issued 7/9/2010. *MAC*
~~Applicant was found guilty at trial and sentenced on July 16, 2010. The application was~~
~~therefor due on July 17, 2011.~~ *7/16/2014*
This application was filed on August 9, 2019, well beyond the

statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Successiveness

The application shall 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.

Under this statute, successive PCR 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).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR applications; thus, the current application is successive and barred

under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR applications. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR application.

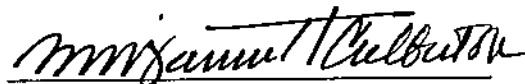
IV. Conclusion

Pursuant to South Carolina Code Annotated Section 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 Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Fifteenth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Horry County Clerk of Court and opposing counsel within twenty days, 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 10th day of June, 2021.


BENJAMIN H. CULBERTSON
Chief Administrative Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina