



ALAN WILSON
ATTORNEY GENERAL

August 29, 2019

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, South Carolina 29528-0677

Horry County
2019 SEP -3 PM 1:50
Horry County, SC

Re: Deborah Hubbard-Sarvis, #80267 v. State of South Carolina
2019-CP-26-0989

Dear Ms. Elvis:

Enclosed please find the original **Conditional Order of Dismissal** signed by the Honorable Larry B. Hyman, 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.

Should you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General

JAI/ec

Enclosure



ALAN WILSON
ATTORNEY GENERAL

August 20, 2019

The Honorable Steven H. John
Chief Judge, 15th Circuit
1301 Second Avenue, Suite 3A30
Conway, South Carolina 29526-5234

Horry County
2019 SEP -3 PM 1:50
Horry County, SC

Re: Deborah Hubbard-Sarvis, #80267 v. State of South Carolina
2019-CP-26-00989

Dear Judge John:

Enclosed please find the proposed **Conditional Order of Dismissal** in the above-captioned case.

If this Order meets your approval, please sign and return to me in the enclosed envelope, and I will forward to the Horry County Clerk of Court to be filed and served. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General

JAI/ec
Enclosures

cc: Deborah Hubbard- Sarvis, #80267

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Deborah Hubbard-Sarvis,)
S.C.D.C. No. 80267,)

2019-CP-26-00989

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**CONDITIONAL ORDER OF
DISMISSAL**

Horry County, SC
2019 SEP -3 PM 1:5
COUNTY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Deborah Hubbard-Sarvis (Applicant) on February 19, 2019. The State (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 January 1992, the Horry County Grand Jury indicted Applicant for murder (1992-GS-26-1). Teresa Johns, Esquire, represented Applicant. Assistant Solicitor Ralph Wilson, Esquire, prosecuted the case. On March 19, 1992, Applicant proceeded to trial before the Honorable Sidney T. Floyd. The jury found Applicant guilty as indicted. Judge Floyd sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 4, 1994. State v. Sarvis, 317 S.C. 102, 450 S.E.2d 606 (1994). The South Carolina Supreme Court denied her petition for a writ of certiorari on May 18, 1995.

II.

First PCR Application: 1995-CP-26-02696

Applicant subsequently filed an application for PCR on September 19, 1995. Respondent filed its return on January 5, 1996. An evidentiary hearing was held on April 25, 1996. Applicant was present at the hearing and was represented by Johnny Gardner, Esquire. On July 8, 1996, the Honorable Daniel E. Martin, issued the order of dismissal denying Applicant's application for post-conviction relief. Upon information and belief, Applicant appealed and the South Carolina Supreme Court affirmed the dismissal of the PCR application.

Second PCR Application: 1999-CP-04129

Applicant filed her second PCR application on October 27, 1999, in which she alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Perjured Testimony
3. Newly Discovered Evidence

Respondent made its return and motion to dismiss on February 9, 2000. The circuit court issued a conditional order of dismissal on March 11, 2000. On October 29, 2003, the Honorable John L. Breeden issued a final order of dismissal. Applicant appealed, and the South Carolina Supreme Court denied her petition for writ of certiorari on August 4, 2004.

Third PCR Application: 2005-CP-26-00728

Applicant filed her third PCR application on February 10, 2005, alleging her parole ineligibility was newly discovered evidence under Coates v. State, 352 S.C. 500, 575 S.E.2d 557 (2003). Respondent made its return and motion to dismiss on July 7, 2005, and amended return and motion to dismiss on April 9, 2008.

An evidentiary hearing was held on May 1, 2008, at the Horry County Courthouse. Paul Archer, Esquire, represented Applicant. On May 15, 2008, the Honorable Steven H. John denied and dismissed the application.

Applicant filed a timely notice of appeal. The appeal was denied and dismissed on September 23, 2010. The remittitur was issued on October 11, 2010.

Fourth PCR Application: 2008-CP-26-04509

Applicant filed her fourth PCR application on June 9, 2008, in which she alleged the following grounds for relief:

1. "I am eligible for parole; SCDPPPS has erroneously denied parole consideration pursuant to S.C. Code Ann 16-25-9"
2. Ineffective Assistance of Counsel

Respondent made its return and motion to dismiss on July 8, 2008. The circuit court issued a conditional order of dismissal on July 21, 2008. On September 16, 2008, the Honorable J. Michael Baxley issued a final order of dismissal.

Applicant filed a timely notice of appeal. On December 2, 2008, Judge Baxley issued a written order denying and dismissing the appeal.

Fifth PCR Application: 2010-CP-26-11316

Applicant filed her fifth PCR application on December 2, 2010, in which she alleged the following grounds for relief:

1. Ineffective Assistance of Counsel

Respondent made its return and motion to dismiss on December 31, 2010. The circuit court issued a conditional order of dismissal on April 6, 2011. On June 18, 2012, the Honorable Steven H. John issued a final order of dismissal.

Sixth PCR Application: 2014-CP-26-00418

Applicant filed her sixth PCR application on January 24, 2014, in which she alleged the following grounds for relief:

1. "Ineffective assistance of counsel"
 - a. "Withheld exculpatory evidence."
2. "Malicious prosecution"
3. "Use of defective indictment to obtain LWOP sentence."
4. "Trial court lacked subject matter jurisdiction."

Respondent made its return and motion to dismiss on March 26, 2015. The circuit court issued a conditional order of dismissal on April 8, 2015. On June 22, 2015, the Honorable Steven H. John issued a final order of dismissal denying and dismissing the application with prejudice.

II. CURRENT ALLEGATIONS

In her seventh and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Obstruction of Justice"
2. "Ineffective Assistance of Counsel"
3. "Life-Threatening Conditions of Confinement"

III. STATUTE OF LIMITATIONS

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

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.

The South Carolina Supreme Court held the one-year 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).

Applicant was found guilty of murder on March 19, 1992. This application was filed on February 19, 2019, almost twenty five years past the deadline.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period ends. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this 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." Therefore, this Court must summarily dismiss this application for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV. SUCCESSIVENESS

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 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. *Alice 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. 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 *six* prior applications 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 she could not have raised her current allegations in her previous applications for post-conviction relief. Therefore, she has failed to meet the burden imposed upon her, and the Court summarily dismiss the application as successive.

V. LACHES

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” *Id.* (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has

worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

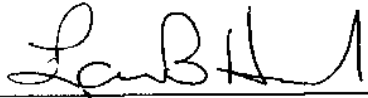
Applicant seeks post-conviction relief more than twenty seven years after her conviction. Applicant has offered no justification for the delay. Additionally, witnesses may no longer be available. As a result, Applicant’s delay in bringing this action has affected the availability of evidence for appropriate review. The state would be severely prejudiced if forced to proceed on the merits on her sixth application. Therefore, this application is barred by the equitable doctrine of laches.

VI. CONCLUSION

Pursuant to section 17-27-70(b) of the South Carolina Code, this 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 her 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
Jacob A. Isenberg, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211-1549

AND IT IS SO ORDERED this 26 day of AUG, 2019.


~~STEVEN H. JOHN~~ LARRY B. HYMAS I
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Conway, South Carolina