

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
)
)
)
Christopher L. Williams,)
S.C.D.C. No. 281434)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2011-CP-15-0402

CONDITIONAL ORDER OF DISMISSAL

2014 OCT 27 AM 8:39
PARTRICK COUNTY
COLLETON COUNTY
COMMON PLEAS

This matter comes before this Court on an application for post-conviction relief (PC) filed by Christopher L. Williams (Applicant) on May 4, 2011. The State (Respondent) received the application on January 31, 2014 and made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. He was indicted at the March 2001 term of General Sessions for the Colleton County Grand Jury for murder (2001-GS-15-0164) and armed robbery (2001-GS-15-0163). Sean Thornton, Esquire, represented Applicant. On January 28, 2002, Applicant pled guilty as indicted. The Honorable Perry M. Buckner sentenced him to concurrent sentences of thirty-five years' imprisonment for murder and twenty years' imprisonment for armed robbery.

Applicant filed a notice of appeal, and Wanda H. Haile, Esquire, perfected the appeal in

the form of an *Anders*¹ brief. Applicant filed a pro se brief. The South Carolina Court of Appeals dismissed the appeal on April 17, 2003. *State v. Williams*, Op. No. 2003-UP-280 (S.C. Ct. App. filed Apr. 17, 2003). The remittitur was issued on May 20, 2003.

2004-CP-15-0208

Applicant filed his first PCR application on February 20, 2004, alleging the following grounds for relief:

1. Ineffective assistance of counsel in that counsel:
 - i. Failed to investigate.
 - ii. Gave Applicant inaccurate information.
 - iii. Did not review evidence with Applicant.
 - iv. Did not consult with the Applicant about the defense.
 - v. Should not have waived Applicant's right to cross-examine psychologist/psychiatrist.
 - vi. Failed to quash indictment.
2. Involuntary guilty plea.
3. Subject matter jurisdiction in that solicitor changed the time from the indictment during his recitation of the facts.

Respondent filed its return on March 8, 2005. An evidentiary hearing was held at the Beaufort County Courthouse on September 4, 2009. Pamela J. Polzin, Esquire, represented Applicant.² The Honorable Alexander S. Macaulay denied and dismissed the application by order filed October 29, 2009.

Applicant appealed, and the South Carolina Supreme Court denied the *Johnson*³ petition for writ of a certiorari on April 6, 2012. The remittitur was issued on April 24, 2012.

6:12-cv-01590

Applicant filed a pro se federal petition for a writ of habeas corpus on June 7, 2012. Respondent made its return and motion for summary judgment on July 12, 2012. The Honorable

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

² Dorcas M. Tuten, Esquire, was originally appointed as Applicant's counsel. By consent order filed June 25, 2009, Pamela J. Polzin, Esquire, was substituted as Applicant's counsel.

³ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

Kevin F. McDonald, United States Magistrate Judge, issued a report on December 7, 2012 recommending that Respondent's motion for summary judgment be granted. The Honorable David C. Norton, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition on January 22, 2013.

Applicant appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the district court's decision on April 23, 2013 and issued its mandate on May 15, 2013.

II.

Applicant filed his current PCR application on May 4, 2011. He alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel – of counsel Polzin.
 - i. Clear violations of the Sixth Amendment of the United States Constitution of ineffective assistance of trial counsel, appeal counsel and violations of South Carolina Rules Civil Procedure Rule 71.1(d) by court appointed PCR counsel and S.C. law regarding ineffective counsel of PCR-appeal counsel.
 - ii. PCR attorney Polzin failed to confer with Applicant, raise all available grounds, amend application, failed to file notice of intent to appeal, nor did she inform him the rights he has in any further appeal process.

Before this Court are the Colleton County Clerk of Court records regarding the subject convictions, records from the South Carolina Department of Corrections, Applicant's previous and current PCR applications, and appellate court records.

III.

This Court finds it must summarily dismiss the current PCR application 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 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 Applicant could have raised these allegations in a previous application, then 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 contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and not a sufficient reason to warrant a successive application. The United States Supreme Court has held there is no constitutional right to counsel in PCR proceedings. *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. *Aice*, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court has likewise 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)). *Aice* further held that “the contention that prior PCR counsel was ineffective is not *per se* a “sufficient reason” allowing for a successive PCR application under § 17-27-90.” *Id.* at 452, 409 S.E.2d at 394. In his application, Applicant argues PCR counsel failed to file notice of intent to appeal; however, PCR counsel filed a notice of intent to appeal on Applicant’s behalf on July 16, 2010. Robert M. Pachak, Esquire, perfected that appeal with a *Johnson* petition, and the South Carolina Supreme Court denied his petition for a writ of certiorari on April 6, 2012. Applicant therefore received his full “bite at the apple.” The *Aice* court noted, “Finality 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. Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application.

This Court finds Applicant failed to establish any sufficient reason why his current grounds for relief were not properly raised in his previous application. This Court must summarily dismiss this application because it is successive to Applicant’s previous PCR applications.

IV.

This Court further 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). South Carolina Code Section 17-27-45(a) reads 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 upon an appeal, whichever is later.

The South Carolina Supreme Court 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). Applicant pled guilty to the offenses he challenges in his application on January 28, 2002. The remittitur from his appeal was issued on May 20, 2003. Therefore, Applicant was required to file his PCR application on or before May 20, 2004. Applicant filed this application on May 4, 2011, **more than six years** after the statutory filing period expired.

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 addition, South Carolina Code Section 17-27-70(c) (1985) 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." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

(Conclusion and signature on the following page)

V.

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 him to show why this Order should not become final. Applicant shall file any reasons he may have with the Colleton County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 13 day of Oct, 2014.



CARMEN T. MULLEN
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Beaufort, South Carolina