

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FIFTH JUDICIAL CIRCUIT )

HENDRICKS Larry E, 254256 )

DOCKET NO. 2010-CP-40-08589 )

Applicant, )

v. )

CONDITIONAL ORDER OF DISMISSAL )

State of South Carolina, )

Respondent. )

JEANE L. WILKINS-PRIDE  
C.C. & G.S.

2012 MAR 30 PM 2:27

RICHLAND COUNTY  
FILED

This matter comes before this Court by way of an application for post-conviction relief filed October 4, 2011.

The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted and/or convicted of the following: Sexual Exploitation of a Minor (third degree) 3 counts – 98-GS-40-26192;26204;26208. The Applicant was represented by Douglas Strickler. The Applicant was sentenced on November 30, 1998 by The Honorable L. Casey Manning to three (3) consecutive sentences of five years incarceration each. These sentences were consecutive to all other sentences imposed the same date. The Applicant did not appeal his conviction.

The Applicant has filed one or more prior PCR actions. Hendricks first filed a post-conviction relief application (PCR) on July 7, 1999 (99-CP-40-02381). An evidentiary hearing was held before the Honorable Alexander S. Macaulay on January 16, 2001. Judge Macaulay issued an order dismissing the PCR application on May 19, 2003. Hendricks filed a notice of appeal and the writ of certiorari was denied by the South Carolina Supreme Court on May 18, 2005. On July 18, 2005, Hendricks filed a Motion to Set Aside Order under Rule 60(b) of the South Carolina Rules of Civil Procedure. Judge Macaulay issued an order denying the motion on September 14, 2006.

In August 2005, Hendricks filed a Motion to Amend and Supplement the original Motion to Set Aside. On July 10, 2006, he filed a Notice of Motion for Default Judgment along with a Declaration for Entry of Default. Hendricks filed *pro se* a notice of intent to appeal Judge Macaulay's order denying the Motion to set aside under Rule 60(b) on October 24, 2006. There was a petition for writ of certiorari that was ultimately denied on or about June 19, 2008. The Applicant has also filed a State Habeas type action, (2010-CP-40-4304); it was dismissed in August of last year.

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons: several "mis-advice of counsel" claims relating to the constitutionality of the charges and advice to plead. He also asserts that Padilla v. Kentucky, 130 S.Ct. 1473 (2010) is relevant to his claims.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **Timeliness – S.C. Code Ann § 17-27-45(a)**

This Court agrees with the Respondent that this Application for Post-Conviction Relief should 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. S.C. Code Ann. §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 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). For the purposes of this Order, the Applicant's

conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later. Here that date is November 30, 1998. Adding one (1) year per S.C. Code Ann. § 17-27-45(a) and one (1) day per Rule 6(a), SCRPC means that this PCR application had to be filed by December 1, 1999. This Application was filed on October 4, 2011, well beyond the expiration of the statutory filing period.

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, S.C. Code Ann. § 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 shall summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

### SUCCESSIVE

The application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 point to 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., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).


The Applicant could have raised the grounds currently asserted in his prior post-conviction relief application. He has failed to present any reasons why he could not have raised them previously.

The Applicant's claim that Padilla v. Kentucky, 130 S.Ct. 1473 (2010) is relevant is without merit. Padilla is related to immigration type issues and guilty plea counsel. The Applicant could have raised his claims (and/or he did raise his current claims) during his prior PCR. Padilla is not relevant and does not affect the statute of limitations analysis for this Applicant in anyway.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted thirty (30) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General Brian T. Petrano  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Fifth Judicial Circuit

Columbia, South Carolina  
March 16, 2012

*af*  
#5

Larry Edward Hendricks  
FCDC, 10 Fair Lane, C-1  
Winnsboro, SC 29180

RECEIVED

MAY 13 2013

S.C. SUPREME COURT

May 8, 2013

Re: Hendricks v. State, App. Case # 2013-000813

Dear Mr. Shearouse,

Please find enclosed, pursuant to your May 6, 2013 request, a copy of the Conditional order of Dismissal for March 20, 2012. This in reference to Docket No. 2010-CP-40-08589.

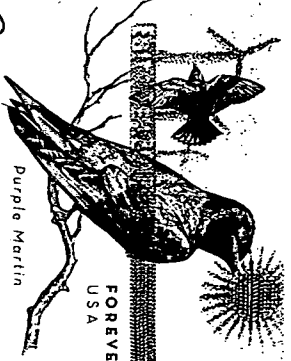
I appreciate your time and assistance in the matter referenced above.

Sincerely,  
Larry Edward Hendricks

L. E. Hendricks  
FPO, 10 Fair Ln, C-1  
Windsboro, SC 29180

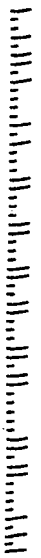
COLUMBIA SC 2901

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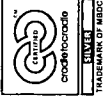
The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
Post Office Box 11330  
Columbia, SC 29211-1330

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