

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 H. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

Re: Trovon A. Keith, #272473 v. State of South Carolina  
2019-CP-26-7456

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: Trovon A. Keith, #272473

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Trovon A. Keith, SCDC No. 272473 )  
Applicant, )  
v. )  
State of South Carolina )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-26-7456

**CONDITIONAL ORDER OF  
DISMISSAL**

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

This matter comes before the Court by way of Applicant Trovon A. Keith's November 18, 2019 application for post-conviction relief. Respondent made its return and moved for summary dismissal. This Court has reviewed the record and the pleadings and finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for kidnapping, first degree criminal sexual conduct, and first degree burglary by the Horry County Grand Jury at its November 2002 term. (2002-GS-26-4463; 2002-GS-26-4464; 2002-GS-26-4465). Applicant was represented by W Edward Chrisco, Esq., and Assistant Solicitor Tom McDermott, Esq., of the Fifteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial before the Honorable Steven H. John on April 5, 2004. The jury convicted Applicant as charged on April 7, 2004, and Judge John sentenced him to consecutive terms of imprisonment of thirty years for each charge.<sup>1</sup>

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<sup>1</sup> Applicant was also indicted at the November 2002 term of the Horry County Grand Jury for five additional counts of first degree burglary, two counts of kidnapping, two counts of first degree assault with intent to commit criminal sexual conduct, one count of first degree criminal sexual conduct, strong arm robbery, and assault and battery of a high and aggravated nature. (2002-GS-26-4453; 2002-GS-26-4454; 2002-GS-26-4455; 2002-GS-26-4457; 2002-GS-26-4458; 2002-GS-26-4459; 2002-GS-26-4460; 2002-GS-26-4461; 2002-GS-26-4462; 2002-GS-26-4466). In July, 2004, Applicant was indicted for assault and battery of a high and aggravated nature (2004-GS-

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Applicant filed a notice of appeal and Assistant Appellate Defender Tara S. Taggart, Esq., of the South Carolina Office of Appellate Defense perfected the appeal. Appellant raised the following issue:

1. Whether the trial judge erred in failing to grant a change of venue.

Counsel request to be relieved pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Applicant proceeded *pro se*. Applicant's convictions were affirmed and his appeal was dismissed. *State v. Keith*, Op. No. 2006-UP-402 (S.C. Ct. App. filed Jan 18, 2006) (per curiam). Applicant did not seek rehearing or further review by the Supreme Court and the remittitur was sent on February 3, 2006.

#### **First PCR Application: 2006-CP-26-5870**

Applicant filed his first PCR application on December 4, 2006 and alleged he was being held in custody unlawfully for the following reasons:

1. Change of Venue – I Trovon A. Keith requested by and through my attorney Ed Chrisco (senior trial Attorney that the trial judge grant...)
2. Doctor who evaluated my mental compacity testified at my trial. The trial judge failed to take diagnosis under consideration
3. All jury members were local residents from small town that have read in media facts about pending cases prior to trial.

Respondent made its return on March 30, 2007. An evidentiary hearing was held on November 19, 2008, at the Horry County Courthouse before the Honorable Michael G. Nettles. Paul Archer, Esq., represented Applicant. Judge Nettles denied relief by order dated December 9, 2008.

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26-2601). Applicant pled guilty to all charges, as indicted, on July 13, 2004, before the Honorable Jackson V. Gregory. Applicant was sentenced to sixty years for each count of burglary, thirty years for each count of kidnapping, thirty years for each count of first degree assault with intent to commit criminal sexual conduct, thirty years for first degree criminal sexual conduct, fifteen years for strong arm robbery, and ten years for assault and battery of a high and aggravated nature. All sentences were ordered to run concurrently for a total effective sentence of sixty years. Applicant did not appeal these convictions and does not challenge them in his present application for post-conviction relief.

Applicant appealed the decision. Applicant was represented by M. Celia Robinson, Esq., who filed a *Johnson* petition, presenting the following issue:

1. Did the PCR judge err in denying relief despite trial counsel's ineffectively failing to make a motion to reconsider the ninety-year-sentence imposed by Judge John?

The Supreme Court of South Carolina denied the petition on August 18, 2011, and the remittitur was sent on September 7, 2011.

**Federal Habeas Corpus Petition: 1:11-cv-02477**

Applicant filed a *pro se* petition for writ of habeas corpus in the United States District Court on September 1, 2011. In the petition, Applicant alleged the following:

1. Trial counsel was ineffective for failing to make a motion to reconsider my 90 year sentence imposed by trial judge.
  - a. After trial on April 7, 2004 trial counsel did not file motion to reconsider. During (PCR) Evidentiary hearing on November 19, 2008 PCR counsel called trial counsel to the stand and asked him why did he not file motion to reconsider excessive 90 year sentence. Trial counsel admitted to not making motion to reconsider my 90 year sentence. Trial counsel gave no explanation but he admitted to being ineffective. At the time this was my first offense of these charges had minor criminal criminal record.

Respondent made its return to the petition and moved for summary dismissal, arguing that Applicant had failed to show any compelling reason why the sentence should be reconsidered, failed to prove ineffective assistance of counsel, and failed to show that the PCR court had unreasonably applied the two-part *Strickland* standard. On June 26, 2012, United States Magistrate Judge Shiva V. Hodges issued a report and recommendation, recommending that Respondent's motion for summary judgment be granted. On August 1, 2012, United States District Court Judge Richard Mark Gergel accepted the recommendation and ordered that the petition be dismissed, and denied a certificate of appealability.

Applicant appealed to the United States Court of Appeals. The appeal was denied on January 24, 2013, via an unpublished, per curiam opinion. *Keith v. Warden Lieber Correctional Inst.*, Op. No 12-7493 (U.S. Ct. App. Decided Jan 24, 2013). Applicant petitioned for rehearing, which was denied on March 11, 2013. Applicant petitioned the Supreme Court of the United States for a writ of certiorari, but was denied on October 7, 2013.

**Second PCR Application: 2012-CP-26-5770**

Applicant filed his second PCR application on July 26, 2012, and alleged he was being held in custody unlawfully for the following reasons:

1. PCR was not disposed in court within time frame.
2. Ineffective assistance of counsel (PCR counsel) Rule 59e SCRCP alter or amend judg.
3. Change of venue requested to counsel conflict of interest want trial in another county.

Respondent made its return and motion to dismiss on September 17, 2012. The circuit court issued a conditional order of dismissal on October 1, 2012. The Honorable Larry B. Hyman, Jr., issued a final order of dismissal on November 27, 2012.

**Third PCR Application: 2014-CP-26-00319**

Applicant filed his third PCR application on January 21, 2014, and alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel – trial counsel failed to present evidence to jury about defendants alleged mental illness
  - a. Ineffective assistance of counsel – trial counsel did not tell members of the jury about what the psychiatrist testified and said about my suspected mental disorder called sexual sadism. A competency hearing was held outside the presence of the jury. Psychiatrist testified that he read the warrants and reports and notice the police found a taser gun in my truck, and he suspected I may be a sexual sadist.
2. Defendant was incompetent during first PCR hearing and was not able to assist PCR counsel.
3. Defendant has regained competency four years later.

4. Ineffective assistance of counsel: trial counsel did not cross-examine sole witness (victim) and did not question lead detective.
5. Trial counsel failed to tell trial judge that prosecutor withheld possible favorable evidence.
6. Transcript incomplete: Trial transcript that court reporter prepared and sent to trial counsel and appellate court was missing competency hearing that was held prior to start of trial.
7. Once jury was selected, trial judge failed to ask jurors if they watch any of the reports in the news about me.
8. *Brady* violation: Trial counsel failed to tell trial judge that prosecutor Thomas McDermott failed to allow me the right to review grand jury transcripts in the courtroom to see if there is any evidence to me and my defense.
9. Trial counsel received the transcript from my trial after trial and filed my direct appeal in court of appeals. Transcript was missing all portions from my competency hearing held before trial started.

Respondent moved to dismiss the application on March 31, 2015, citing the prohibition on successive applications and the statute of limitations. The Honorable Larry B. Hyman signed a conditional order of dismissal on April 20, 2015, provisionally dismissing the application and allowing Applicant twenty days to show why the matter should not be dismissed with prejudice. Applicant filed an untimely response, alleging mental incompetence. The Court rejected his arguments and the Honorable William H. Seals, Jr., signed a final order of dismissal on July 18, 2015. Applicant did not file an appeal.

## II. FACTUAL HISTORY

On the night of July 1, 2002, a Garden City woman went to sleep in her home and was woken up by a stranger in her bedroom, pushing on her leg, telling her he had a gun, and demanding sex. (Tr. 21, 3 – 12). The man then raped her. (Tr. 21, 14-20). The woman testified at trial that the individual was a black male, about 5'4", wearing a white shirt, black do-rag, dark jeans, and boots, with a scruffy face, who smelled like alcohol. (Tr. 25, 19-22; Tr. 26, 4-21). Police apprehended Applicant, advised him of his rights, and he confessed to the crime. (Tr. 200, 6 – Tr. 206, 14).

### III. CURRENT APPLICATION

In his present application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Trial court lack subject matter jurisdiction
  - a. Court was without power to impose conviction(s) and sentence(s) upon criminal offense(s) of burglary first degree, kidnapping, and criminal sexual conduct first degree.

In his prayer for relief, Applicant requests the following:

1. Have conviction(s) and sentence(s) vacated.

Before this Court are the Horry County Clerk of Court's records regarding the subject convictions, the trial transcript, and the records from Applicant's prior PCR and federal habeas actions.

### IV. 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 S.C. Code Ann. §17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

#### *Successiveness*

This Court finds that 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 Applicant's prior application 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 he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR applications.

#### ***Statute of Limitations***

This Court finds that this application shall also 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.

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S.C. Code Ann. § 17-27-45(A). 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, 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.”

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). Applicant was convicted on April 7, 2004. The remittitur on is appeal was sent on February 3, 2006. Therefore, Applicant’s application for post-conviction relief was due no later than February 4, 2007. The application was not filed until November 18, 2019, more than twelve years after the statutory filing period expired. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.


V. 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  
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 10<sup>th</sup> day of June, 2021.

  
BENJAMIN H. CULBERTSON  
Chief Administrative Judge  
Fifteenth Judicial Circuit

Georgetown, South Carolina