

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Randall Edwin Latimer,)
S.C.D.C. No. 135007,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2009-CP-23-0328

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of a Petition for Writ of Habeas Corpus filed January 15, 2009. The Respondent made its Return, requesting the petition be summarily dismissed.

I.

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Petitioner was indicted at the February 1986 term of the Greenville County Grand Jury for first-degree attempted criminal sexual conduct (1986-GS-23-1137) and first-degree burglary (1986-GS-23-1138). He was represented by H.W. "Pat" Paschal, Jr., Esquire.

After the State brought the case to trial, the Petitioner was found guilty of first-degree burglary. At the conclusion of the trial – on April 15, 1986 – the Honorable C. Victor Pyle, Jr. ordered an evaluation. On July 29, 1986, the Honorable Thomas J. Ervin sentenced the Applicant to life imprisonment.

A notice of appeal was filed at the South Carolina Supreme Court. Stephen P. Williams, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme

Court of Appeals affirmed the Applicant's conviction and sentence on August 3, 1987. State v. Latimer, Op. No. 87-MO-331 (S.C. Sup. Ct. filed August 3, 1987).

1997-CP-23-0701

The Petitioner then filed an application for post-conviction relief (PCR) on February 27, 1997 (1997-CP-23-0701). The Respondent filed a return and motion to dismiss on May 21, 1997. The Petitioner raised the following issues in his PCR application:

1. Ineffective assistance of trial counsel.
2. Violation of Constitutional rights.

The Honorable Gary E. Clary denied and dismissed the PCR application by order on May 29, 1997. The Petitioner did not file an appeal.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on December 3, 1997 (6:97-3739-17AK). The Respondent submitted a motion for summary judgment on January 22, 1998. The Honorable William M. Catoe, Jr., United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated April 16, 1998. On June 29, 1998, the Honorable Joseph F. Anderson, Jr., United States District Judge, issued an order dismissing the petition with prejudice.

II.

This Court finds the Petitioner cannot receive relief on his Petition for Writ of Habeas Corpus.

"A habeas corpus petition must support the requested relief." Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998) (citations omitted). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to

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relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson, 329 S.C. at 42, 495 S.E.2d at 428. “Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review.” Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Id. PCR is not rendered “unavailable or inadequate” merely because the petitioner’s application might be dismissed as procedurally barred.

In fact, any matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). The Uniform Post Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. Id.

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998).

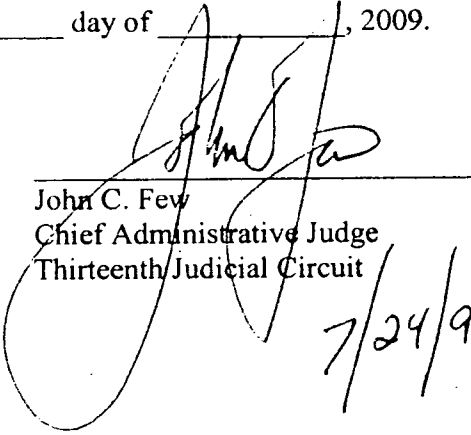
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“Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” Id.

III.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Petitioner advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Petitioner is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this _____ day of _____, 2009.



John C. Few
Chief Administrative Judge
Thirteenth Judicial Circuit

7/24/9

STATE OF SOUTH CAROLINA)
)
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State of South Carolina,)
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Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2009-CP-23-0328

FINAL ORDER

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This matter comes before the Court by way of a Petition for Writ of Habeas Corpus filed January 15, 2009. The Respondent made its return on May 12, 2009, requesting the petition be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed July 24, 2009 and filed July 31, 2009, provisionally denying and dismissing this action, while giving the Petitioner twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated August 11, 2009, serving the above-mentioned Conditional Order of Dismissal on the Petitioner.

In two (2) letters sent to Attorney General Henry McMaster and dated May 18, 2009 and May 24, 2009, the Petitioner argues his petition supported the requested relief. Petitioner argues the burden of proof in this case is on the State. Petitioner argues he was improperly waived up to juvenile court for his trial. Petitioner argues the order committing him to life imprisonment was



falsified. The Petitioner argues that counsel for the Respondent in this case should be dismissed from handling this case.

In a letter sent to the Greenville County Clerk of Court and filed May 28, 2009, the Petitioner argues he was "illegally waived up as a 17 year old juvenile which resulted in his illegal conviction by the trial court." Petitioner argues he was "being held by illegal means and falsified orders of commitment of the Clerk of Court for Greenville County."

In a document captioned "Why Petition Should Not be Summarily Dismissed in Its Entirety" and filed July 10, 2009, the Petitioner argues he raised the issue of subject matter jurisdiction, which can be raised at any time. Petitioner argues he was improperly waived from family court to general sessions.

In a letter sent to the Greenville County Clerk of Court and filed July 13, 2009, the Petitioner argues his petition for writ of habeas corpus should be allowed to continue because it "was accepted in the courts."

This Court has reviewed the Petitioner's responses to the Respondent's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

It is well-settled that "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). Furthermore, the Petitioner raises matters that are cognizable under the Uniform Post Conviction

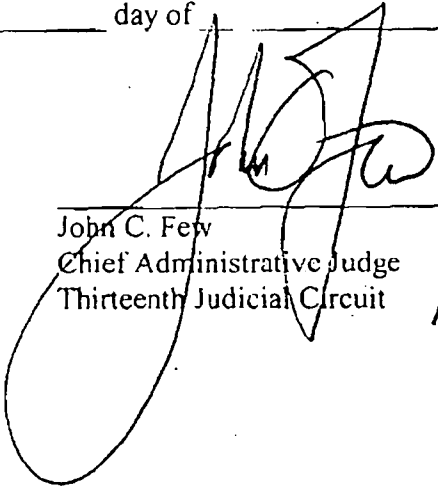


Procedure Act.¹ As such, our Supreme Court has held these matters “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000). This Court finds the Petitioner’s issues would have been known to him when he filed his PCR application (1997-CP-23-0701).

This Court finds the Applicant’s claim that the trial court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds the indictment for first-degree burglary (1986-GS-23-1138) was true-billed and clearly adequate to provide notice of the charge the Applicant was facing.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court’s Conditional Order of Dismissal, the Petition for Writ of Habeas Corpus is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this _____ day of _____, 2009.



John C. Few
Chief Administrative Judge
Thirteenth Judicial Circuit

10/13/9

¹ S.C. Code Ann. §§ 17-27-10 to -120 (2003).

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Mrs. Merditt (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

AFFIDAVIT OF PERSONAL SERVICE

On this 11th day of August 2009, I served the Conditional Order of Dismissal, on Inmate Randall Edwin Latimer, SCDC Inmate # 135007, by delivering personally and leaving a copy of the same at Perry Correctional Institution. Deponent is not a party to this action.

s/ [Signature]
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 11th day of August, 2009
[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: May 12th, 2014

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the S. C. Department of Corrections (Perry Correctional Institution), Pelzer, Greenville County, SC this 11th day of August, 2009.

s/ _____
Inmate
SCDC Inmate #: _____

Inmate Refused to Sign