

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

IN THE COURT OF COMMON PLEAS
2011-CP-23-6934

CONDITIONAL ORDER OF DISMISSAL

FILED
OCT 20 2011
CLERK OF COURT
GREENVILLE, SC
2:00 PM

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 20, 2010. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant 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 Applicant 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 affirmed the Applicant's conviction and sentence. State v. Latimer, Op. No. 87-MO-331 (S.C. Sup. Ct. filed August 3, 1987).

1997-CP-23-0701

The Applicant filed a PCR application on February 27, 1997 (1997-CP-23-0701). The Respondent filed a return and motion to dismiss on May 21, 1997. The Applicant 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 Applicant 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.

State Habeas Corpus

The Applicant filed a "Petition for Writ of Habeas Corpus" in the Court of Common Pleas on January 15, 2009 (2009-CP-23-0328). The Respondent submitted a return, arguing the matter should be dismissed. The Honorable John C. Few signed a conditional order of dismissal



on July 24, 2009. Judge Few signed a final order of dismissal on October 13, 2009. The Applicant did not file an appeal.

2010-CP-23-3989

The Applicant filed a PCR application on May 17, 2010 (2010-CP-23-3989). The Applicant raised the following issues:

1. Parole was illegally revoked.
2. Ineffective assistance of trial counsel.
3. Illegal conviction/sentence.
4. Illegally waived up to the court of General Sessions.
5. Falsified commitments on commitment to Section 5B and to Y.O. Division for observation and evaluation.

The Respondent filed a return and motion to dismiss, arguing the application was untimely and successive. The Honorable Edward W. Miller issued a conditional order of dismissal dated September 21, 2010 and filed September 23, 2010. The Applicant did not file a response. Judge Miller issued a final order of dismissal dated December 6, 2010 and filed December 13, 2010. The Applicant did not appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to obtain a preliminary hearing.
 - b. Failed to have the case brought before the Grand Jury within 90 days.
 - c. "[G]ave the wrong date of conviction on my notice of intent to appeal which caused by sentence to be backlogged."
 - d. "[A]ctions caused me to serve 20 years under a false date of conviction."
2. Illegal arrest:
 - a. "The affidavit failed to aver time of crime or entry."
3. Illegal conviction and sentence:

EWA 3

- a. Trial court did not have jurisdiction to convict or impose sentence because the indictments were not lawfully sworn.
4. Illegal commitment for observation and evaluation:
 - a. This was contrary to §24-19-50.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was sentenced on the offenses he challenges in this application on July 29, 1986 and the South Carolina Supreme Court affirmed the convictions and sentences on August 3, 1987. This application was filed on October 20, 2010, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 that the moving party is entitled to judgment as a matter of law.”

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IV.

This Court further finds the current application should also be dismissed because it is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) 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, 450, 409 S.E.2d 392, 394 (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. (emphasis in original). 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. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications, the application is dismissed.

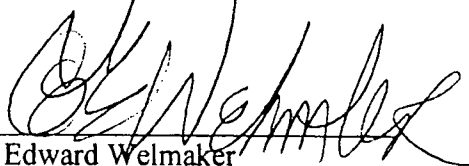
V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to

A handwritten signature in black ink, appearing to be "C. W. A. S.", located at the bottom center of the page.

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 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 16 day of Mar, 2012.


G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

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

IN THE COURT OF COMMON PLEAS
 2011-CP-23-6934


FINAL ORDER OF DISMISSAL

FILED
 GREENVILLE CO. S.C.
 2012 MAR 11 AM 11:59

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 20, 2010. The Respondent made its return on March 13, 2012, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

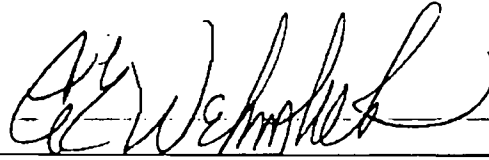
Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 16, 2012 and filed March 30, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) 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 April 23, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant has failed to respond to either the Respondent's motion to dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 6th day of June, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

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

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated L.T. McCumy (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

AFFIDAVIT OF PERSONAL SERVICE

COUNTY OF McCormick)

On this 23rd day of April, 2012, 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 McCormick Correctional Institution, McCormick.

Deponent is not a party to this action.

s/ L.T. McCumy
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 23 day of April, 2012

J. J. Franklin (L.S.)
Notary Public for South Carolina

My Commission Expires: 12-16-2019

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (McCormick Correctional Institution), McCormick, McCormick County, SC this 23rd day of April, 2012.

Randall Edwin Latimer
Inmate
SCDC Inmate #: 135007

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2306934

FILED - COURT OF COMMON PLEAS
GREENVILLE CO., S.C.
JUN 11 AM 11:59

Randall Edwin Latimer 135007 vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); Rule 12(b), SCRCP; Rule 41(a),
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 11th day of June, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 11th day of June, 2012, and a copy mailed first class this 11th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Randall Edwin Latimer 135007 Perry Correctional
Institute 430 Oaklawn Rd/B X 20 Pelzer, SC
296695011

✓ Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court