

FINAL ORDER OF DISMISSAL

2022 SEP 12 AM 11:10
DAVID HAMILTON
C.C.A.P. & GS
2 WORKSOURCING
2

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed by Jeffrey Chronister (Applicant) on April 23, 2019. Respondent made its return and motion to dismiss on August 12, 2019, requesting the application be summarily dismissed asserting it was filed after the one-year statutory filing period, and is successive to Applicant's four prior post-conviction relief actions.¹

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the undersigned issued a Conditional Order of Dismissal filed August 29, 2019, provisionally denying and dismissing this action, while giving Applicant twenty 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 a Certificate of Service, serving the above mentioned Conditional Order of Dismissal on Applicant on September 19, 2019.

On September 3, 2019, Applicant filed a document entitled “Applicant’s pro se Reply To Respondent’s Conditional Order of Dismissal.”² In this response, Applicant argued his post-

¹ Respondent sent Applicant a copy of the return and motion to dismiss and the proposed conditional order of dismissal by U.S. mail on August 7, 2019.

² In Applicant's response he states, "The motion was also submitted 'Pursuant to Rule 60(b), SCRCP[.]'" However, this final order of dismissal addresses the allegations raised by Applicant as it relates to his post-conviction relief application (2019-CP-46-01421), which is currently before this Court.

conviction relief application should not be dismissed because of the "existence of evidence of material facts, [sic] not previously presented and heard that require vacation of the conviction and sentence in the interest of [sic] also the direct verdict produced by fraud on the court in statutory conditional violations." In his motion, Applicant attempts to justify his successive and untimely application on the grounds of subject matter jurisdiction, prosecutorial misconduct, "misrepresentation," "fraud on the court," "directed verdict," and newly discovered evidence.

On January 27, 2020, Applicant filed a letter with the York County Clerk of Court following up on his "motion for after newly discovered evidence, and relating post-conviction relief application" and requesting appointment of counsel. On February 17, 2020, Applicant filed a second letter following up on his response to the conditional order of dismissal and requesting appointment of counsel in his post-conviction relief matter. On March 4, 2020, Applicant filed another "Motion for Appointment of Counsel" with the York County Clerk of Court requesting an attorney to represent him in his "motion for after newly discovered evidence and related post-conviction relief application."

This Court has reviewed Applicant's responses to Respondent's motion to dismiss and the conditional order of dismissal in its entirety, in conjunction with the original pleadings, and finds Applicant has failed to state a sufficient reason why the conditional order of dismissal should not become final.

Response to Request for Appointment of Counsel

In the 2008 order regarding appointment of counsel in post-conviction relief cases, former Chief Justice Toal states:

In post-conviction relief (PCR) cases, the appointment of counsel is appropriate only when a hearing must be held. Rule 71.1, SCRC("If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the

court shall promptly appoint counsel to assist the applicant if he is indigent."); Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008). I find that in many cases counsel are being appointed when the above standard has not been satisfied.

Further, in a significant number of these cases, the application is ultimately denied as being successive or as being barred by the statute of limitations. The appointment of counsel in such cases places an unnecessary burden on the appointment of counsel, and violates the mandate of Rule 608(g), SCACR, that appointments should be minimized. To help address this problem, I find it appropriate to direct the following:

Consistent with Rule 71.1, SCRCR, counsel will not be appointed until the Post-Conviction Relief Section of the Attorney General's Office files its return to the application. In its return, the Attorney General's Office shall clearly state in the caption heading whether it requests that counsel be appointed for the applicant.

If the Attorney General requests the appointment of counsel, counsel shall be appointed for the applicant unless a circuit court judge determines that it is inappropriate to do so. The authority to make the appointments in these cases may be delegated to the Clerk of Court or some other official.

If the Attorney General opposes the appointment of counsel for an indigent applicant, counsel will only be appointed as follows:

(1) If the Attorney General asserts that the application is barred as being successive or as being untimely under the statute of limitations, [1] counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations. Cf. Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001) (statute of limitations).

(2) In all other cases in which the State opposes the appointment of counsel, counsel will only be appointed upon written order of a circuit court judge under the standard contained in Rule 71.1, SCRCR.

This is the most recent order issued by this Court regarding appointment of counsel in post-conviction relief cases before the circuit court.

In the present case, the South Carolina Attorney General's Office asserted in its return and motion to dismiss that the application should be summarily dismissed for being untimely under the statute of limitations and successive. In its conditional order, this Court provisionally denied and dismissed this action as being untimely under the statute of limitations and successive. Therefore, this Court denies Applicant's request for appointment of counsel.

Statute of Limitations

This Court finds the application shall 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.

S.C. Code Ann. § 17-27-45(A).

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). 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, section 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." S.C. Code Ann. § 17-27-70(c).

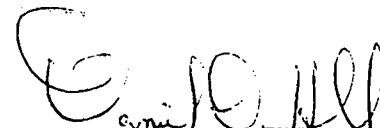
Applicant was found guilty on September 22, 1992, and the remittitur from his direct appeal was issued on September 19, 1994. Applicant was, therefore, required to file this current application on or before September 20, 1995. The current application was not filed until April 23, 2019, which is **over twenty years** past the one-year statutory filing period expired. Therefore, this Court finds this application be summarily dismissed as barred by the statute of limitations. S.C. Code. Ann. § 17-27-70 (b) & (c).

Successive / Newly Discovered Evidence

This application is successive to Applicant's previous *four* post-conviction relief applications. 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 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). 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. Before a court will hold an evidentiary hearing, the applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

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. This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 9th day of September, 2022.



DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jeffrey Lynn Chronister, # 189827,

C/A No. 1:24-cv-1946-JFA-SVH

Petitioner,

v.

Warden Terri Wallace,

ORDER

Respondent.

Jeffrey Lynn Chronister (“Petitioner”), proceeding pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), the case was referred to the Magistrate Judge for initial review.

After performing an initial review of the petition pursuant to the Rules Governing Section 2254 Proceedings for the United States District Court, the Magistrate Judge assigned to this action¹ prepared a through report and recommendation (“Report”). (ECF No. 7). Within the Report, the Magistrate Judge opines the Petition is subject to dismissal. The Report sets forth, in detail, the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation.

Petitioner was advised of his right to object to the Report, which was entered on the docket on May 21, 2024. *Id.* The Magistrate Judge required Petitioner to file objections by

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.). The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976).

June 4, 2024. *Id.* However, Petitioner failed to file objections and the time for doing so has elapsed. Thus, this matter is ripe for review.

A district court is only required to conduct a *de novo* review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992).

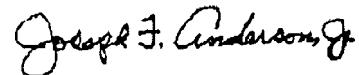
In the absence of specific objections to portions of the Magistrate's Report, this Court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Here, Petitioner has failed to raise any objections and therefore this Court is not required to give an explanation for adopting the recommendation. A review of the Report indicates that the Magistrate Judge correctly concluded that the petition is subject to dismissal.

After carefully reviewing the applicable laws, the record in this case, and the Report, this Court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein by reference. (ECF No. 7). Consequently, the petition is dismissed without prejudice and without requiring Respondent to file an answer or return. To the extent Petitioner's request for appointment of counsel may be construed as a motion to appoint counsel, the motion is denied in light of dismissal of the petition.

It is further ordered that a certificate of appealability is denied because Petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).²

IT IS SO ORDERED.



July 18, 2024
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

² A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In the instant matter, the court finds that Petitioner has failed to make "a substantial showing of the denial of a constitutional right."

PAGE 517IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jeffrey Lynn Chronister, # 189827,

C/A No. 1:24-cv-1946-JFA

Petitioner,

v.

Warden Terri Wallace,

ORDER

Respondent.

This matter is currently before the court on Jeffrey Lynn Chronister's "Rule 60 motion for relief from judgment." (ECF No. 15). Within his motion, Chronister appears to argue that newly discovered evidence relevant to his 1992 state court conviction should serve as a basis to reopen the instant habeas proceedings.

Chronister's petition was dismissed by Order dated July 18, 2024, wherein the Court adopted the Magistrate Judge's recommendation of dismissal for lack of jurisdiction. (ECF No. 12). Chronister's instant Rule 60 motion does not address this Court's order or the Magistrate Judge's Report. Additionally, Chronister's motion fails to show how this Court possess jurisdiction to adjudicate the instant matter. As originally explained in the Report:

This court cannot consider Petitioner's second or successive § 2254 petition unless he has obtained a Pre-Filing Authorization from the Fourth Circuit under 28 U.S.C. § 2244(b)(3). *See In re Williams*, 330 F.3d 277 (4th Cir. 2003); *In re Fowlkes*, 326 F.3d 542 (4th Cir. 2003).

The instant petition is successive. Petitioner challenges the same convictions he challenged in Chronister I and Chronister II. Chronister I was adjudicated on the merits. *Chronister v. Moore*, C/A No. 4:98-3372-JFA, ECF No. 19 (Sept. 23, 1999). In the absence of a showing that Petitioner obtained authorization from the Fourth Circuit to file a successive habeas petition in the district court, this court lacks jurisdiction to consider it.

APPENDIX-J

-67-

PAGE 2 of 2

(ECF No. 7).

Accordingly, because this Court lacked jurisdiction to consider Chronister's original petition, it also lacks jurisdiction to grant the relief sought in the instant motion for relief from judgment. Accordingly, this motion (ECF No. 15) is denied.

IT IS SO ORDERED.

Joseph F. Anderson, Jr.

October 23, 2024
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

-2 of 2

FILED: February 7, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-103

In re: JEFFREY LYNN CHRONISTER, a/k/a Lynn Jeffrey Chronister

Movant

O R D E R

Movant has filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2254.

The court denies the motion.

Entered at the direction of Judge King with the concurrence of Judge Wynn and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX-K PAGE-119