STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
John Foster Norris, SCDC #95847, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2021-CP-04-1849 **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by John Foster Norris (Applicant) on September 22, 2021. The State made its return on March 15, 2022, requesting the action be summarily dismissed.[1]

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. On November 13, 1982, Applicant brutally beat, raped, and murdered seventy-five year-old Louise Davis. During its February 1983 term, the Anderson County Grand Jury indicted Applicant for murder (1983-GS-04-0224) and first-degree criminal sexual conduct (CSC) (1983-GS-04-0225).

[1] The State's return was originally due on December 26, 2021. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within . . . 90 days if it arises out of a trial."). However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request to accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

In June of 1983, Applicant proceeded to a jury trial before the Honorable Walter T. Cox, Jr., circuit court judge. Charles W. White, Jr., Esquire represented Applicant.

The factual background of this case is summarized by the South Carolina Supreme Court in *State v. Norris* as follows:

> At approximately 12:02 p.m., November 14, 1982, police officers found the severely beaten body of 75 year old Louise Davis beside a vacant house in Anderson, South Carolina. Her injuries included multiple fractures of facial bones, dislocation of the jawbone on both sides and down the midline, bruises and tears of the face and complete exposure of the left eyeball. Death resulted from asphyxiation due to the blocking of her airway by collapsing soft tissue following the fracture of her jawbone. According to the pathologist she had engaged in sexual intercourse anywhere from several hours to three days prior to her death.
>
> On November 14 police, acting upon information from a witness who saw him leave the Red Door Lounge with the victim at about 10:30 p.m. the previous evening, arrested [Applicant] at his parents' home. After receiving *Miranda* rights [Applicant] voluntarily gave police items of clothing worn by him the evening of November 13, which were identified by the witness as those worn by [Applicant] when seen with the victim.
>
> [Applicant] was again arrested and given *Miranda* warnings. He volunteered a statement admitting that he: severely beat the victim with his fists; had sex with her; stomped her in the face ten or twelve times; ate two hot dogs at a local grill, then went to his parents' home to watch TV and go to bed. He also admitted that, when he turned over clothing to police earlier that day, he withheld the shoes with which he stomped the victim. He had kept them in order to remove blood stains.
>
> At trial, however, [Applicant] claimed the victim consented, and he offered a different version of what took place, testifying that: the victim had solicited sex from him for $5.00; he took the victim to the vacant lot where she submitted voluntarily to intercourse; the victim cursed him when he told her he did not have the $5.00; he became angry, "lost his head", and began hitting and kicking her; he was provoked into beating the victim but had no intention to kill her.

> The jury found Appellant guilty of murder while in the commission of rape. In Phase II the jury recommended the death penalty, upon the two aggravating circumstances of rape and a prior conviction for murder.

285 S.C. 86, 89–90, 328 S.E.2d 339, 341 (1985), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) and *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

Applicant was represented on direct appeal by Appellate Defender Elizabeth C. Fullwood. Following briefing and oral argument, our Supreme Court affirmed Applicant's convictions, reversed the death sentence, and remanded for resentencing by opinion issued March 25, 1985. *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339.

On September 9–11, 1985, Applicant appeared before the Honorable Thomas L. Hughston, Jr., for resentencing. Judge Hughston sentenced Applicant consecutive terms of life imprisonment for murder and thirty years for first-degree CSC. Applicant did not appeal.

Applicant commenced this PCR action on September 22, 2021.[2]

II. CURRENT APPLICATION

In the instant application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. "Did not consent to search of home of residence"
    a. "Consent can only be consented to by the home owner
2. "Substantial right affected"
    a. "An interest one hold was not recognize[*sic*] and secured"
3. Attorney did not object"
    a. "Was not in my best interest"

Applicant requests relief as follows:

> "unfair outcome in judicial proceeding"

[2] Since these convictions occurred almost forty years ago, the State is unable to produce sufficient records to fully summarize Applicant's procedural history. However, the State's record indicate that Applicant did not file a direct appeal, post-conviction relief application, or petition for habeas corpus following resentencing in September 1985.

Before this Court are the Anderson County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Because there is no genuine issue of material fact which would necessitate an evidentiary hearing, this Court hereby informs the parties of its intent to dismiss the application as procedurally barred. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a prima facie showing he is entitled to relief before the court will hold an evidentiary hearing). Pursuant to section 17-27-70 and -80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law:

A. Statute of Limitations

As an initial matter, this Court finds this action must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act[3] (Act). Specifically, the Act requires:

> (A) 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.
>
> (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds

[3] S.C. Code Ann. §§ 17-27-10 to -160.

> that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
>
> (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A)–(C).

Our 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. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *See Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 ("Ignorance of the statute of limitations is not an excuse for late filing . . ."); *Sutton v. State*, 361 S.C. 644, 648, 606 S.E.2d 779, 781 (2004) (declining "to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005).

Applicant's filed the instant post-conviction relief application well after the expiration of the statutory filing period. Applicant was convicted in June of 1983 and the opinion affirming his

convictions but remanding for resentencing was issued on March 25, 1985. Applicant was subsequently resentenced on September 11, 1985. This application was filed on September 22, 2021—*thirty-five years* after the requisite filing period expired.

Accordingly, this action must be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

B. *Laches*

This Court further finds this action must be summarily dismissed based on the equitable doctrine of *laches*. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. *McElrath v. State*, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." *Id.*

Where a PCR applicant fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (quoting *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)); *see also RWE*

NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734–35 (2007) ("*Laches* connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner."). "Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." *Whitehead*, 352 S.C. at 219, 574 S.E.2d at 202. Recognizing the importance of finality in litigation, Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one-year statute of limitations. *See* S.C. Code Ann. § 17-27-45(A).

Applicant filed this PCR action almost *forty years* after he was convicted. *See, e.g.*, *Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that *laches* barred belated review of denial of PCR seven years after PCR hearing was held). Applicant's delay has greatly prejudiced the State (as well as Applicant). Absent some explanation or justification for the delay in seeking PCR, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. *McElrath*, 276 S.C. at 283, 277 S.E.2d at 890. Records of the trial are almost certainly no longer available. *See, e.g.*, Rule 607(i), SCACR (court reporter only required to retain records for five years). Witness memories and physical evidence will have naturally faded and degraded. *State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the

delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application must be summarily dismissed as barred by the equitable doctrine of *laches*.

C. Frustration of Finality of Convictions

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in *Aice v. State* explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. 448, 451–52, 409 S.E.2d 392, 394–95 (1991) (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.' " *United States v. Fugit*, 703 F.3d 248, 252 (4th Cir. 2012) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in *Mackey v. United States*, Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function

> at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after *Mackey*, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in *Anderson v. Leeke*, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978).

Applicant's attempt to relitigate his convictions and sentences through this time-barred application is contrary to the recognized need for finality of litigation.

IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), this 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 (20) 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 Anderson County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lillian L. Meadows
Post-Conviction Relief Division – 10th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Anderson County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 25 **day of** March **, 2022.**

R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit

Anderson, South Carolina

ALAN WILSON
ATTORNEY GENERAL

March 15, 2022

The Honorable R. Lawton McIntosh
Tenth Circuit Chief Administrative Judge
Post Office Box 8002
Anderson, South Carolina 29622

Re: John F. Norris, #95847 v. State of South Carolina
2021-CP-04-01849

Dear Judge McIntosh:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Anderson County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LAM/wjc
Enclosure(s)

cc: John F. Norris, #95847