

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

Willie Frazier, #219272,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT
Case No.: 2011-CP-06-0116

FINAL ORDER

FILED FOR RECORD
2012 JAN -9 PM 1:38
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief filed March 14, 2011. The State made its Return and Motion to Dismiss on August 11, 2011, requesting that the application be denied and summarily dismissed as untimely, successive, and barred by the doctrines of *laches* and *res judicata*.

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 dated August 15, 2011, and filed August 26, 2011, provisionally denying and dismissing this action. This Court gave 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 September 29, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order by way of one *pro se* document entitled "Object to Motion to Dismiss the State's Return Conditional Order August 15, 2011 ", dated



September 11, 2011, and filed with the Clerk September 15, 2011. In it, Applicant set forth the following objections to the Conditional Order of Dismissal:

- “the original application was filed without the assistance of legal counsel to ensure Applicant’s claims were filed in accordance with applicable state court rules governing collateral review. Applicant is in custody to his 1995 YOA conviction which explains the reasonable justification for the delay in seeking post-conviction relief, the defense of laches should not be a defense for the state to rely on in denying Applicant a full evidentiary hearing. Applicant sentence was enhanced June 24, 2998 in Aiken County Court under the two strike law. Applicant had no reason to file a post-conviction in February of 1998 challenging the guilty plea, the prior conviction was used to enhance Applicant sentence to life therefore the statute of limitations does not apply...Applicant’s prior guilty plea trial court judge failure to warn applicant of the advantages and disadvantages of the plea in Feb 8, 1995 such as the consequences if the applicant committed a second subsequent violent crime in the future would mandate life without parole under S.C. 17-25-45 two strike law.”

Having reviewed Applicant’s response thoroughly in conjuncture with the records before this Court, I find Applicant has failed to sufficiently set forth a reason why the Conditional Order should not become final. Applicant contends that he is entitled to an evidentiary hearing on this application despite its untimely and successive nature because he was not warned at his 1995 plea of the potential enhancement consequences he would encounter if he committed a future crime. I find this allegation to be without merit as the plea judge is not required to warn a defendant of the consequences that he/she might incur if he/she hypothetically commits some criminal act in the

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future. *See for example Ayre v. South Carolina*, 2009 WL 4057158 (D.S.C. 2009). Further, this allegation is insufficient reason to overcome the untimely and successive nature of this application.

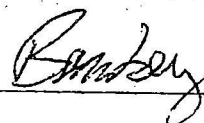
This Court has reviewed Applicant's response to the State's Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final.

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

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 21 day of Dec, 2011.


DOYET A. EARLY, III
Chief Judge for Administrative Purposes
Second Judicial Circuit Court


South Carolina.

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