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ELECTRONICALLY FILED - 2017 Jul 31 8:56 AM - AIKEN - COMMON PLEAS - CASE#2016CP0201269

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT SUPREME COURT
)

Cedric Ali Colden, #346287,

) Case No.: 2016-CP-02-⁰¹⁷⁶⁹~~02755~~
)

Applicant,

v.

) **CONDITIONAL ORDER OF DISMISSAL**
)

State of South Carolina,

Respondent.

In response to the application for post-conviction relief filed by Cedric Ali Colden (Applicant) on June 01, 2016, Respondent would respectfully show this Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the October 2004 term of the Aiken County Grand Jury for armed robbery (2004-GS-02-1744), kidnapping (2002-GS-02-1746), and murder (2004-GS-02-1748). Applicant proceeded to trial. Reginald Dale Simmons, Esquire, represented Applicant. John Williams Weeks, Esquire, prosecuted the case. On October 28, 2004, the Honorable Reginald Lloyd sentenced Applicant to concurrent terms of thirty years' imprisonment for the armed robbery and kidnapping offenses. Applicant was sentenced to life for the murder offense. Applicant appealed his convictions and sentences. The South Carolina Court of Appeals affirmed the convictions and sentences. The Remittitur was issued on March 8, 2007.

CURRENT APPLICATION

Applicant filed his first and current application for post-conviction relief on June 1, 2016. In the application, Applicant alleges that he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel in that:
 - a. "Counsel was ineffective for allowing the state to admit into evidence a statement applicant made while in police custody because the statement was involuntary and induced by a promise not to seek the death penalty."
 - b. "Applicant's Due Process rights were violated when his motion for mental evaluation was denied by the trial court."
 - c. "Trial counsel failed to object to the trial court's abuse of discretion."
 - d. "Applicant's Due Process rights violated by trial court's denial of motion for a continuance."
 - e. "Trial counsel was ineffective for failure to request a lesser included offense jury charge of murder."
 - f. "Trial counsel was ineffective for failure to object to the judge's jury instruction on the facts of his murder offense that reduced the state's burden of proof."
 - g. "Trial counsel failed to object to an erroneous jury charge that violated applicant's Due Process rights."

Also, before this Court are the records of the Aiken County Clerk of Court, Applicant's records from the South Carolina of Corrections, and the records from this application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of limitations

The application should 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). Applicant was sentenced on October 28, 2004. Accordingly, Applicant was required to file this Application on or before October 28, 2005. Applicant did not file this Application until June 1, 2016, well after the statutory filing period had expired.

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, S.C. Code Ann. § 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." Therefore, this application is dismissed for failure to file within the time mandated by the Act.

{Conclusion and Signature on the following page.}




CONCLUSION


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

Office of the Attorney General
Attn: Julie A. Coleman, Esquire
Rasheeda Cleveland, Esquire
PCR Division - 2nd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 13 day of June, 2017.


DOYET A. EARLY III
Chief Administrative Judge
Second Judicial Circuit


_____, South Carolina