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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Clifton Newman, Circuit Judge

Case No.: 2021-CP-43-0929

John F McArthur 180570.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner John F McArthur appeals the Honorable George M McFaddin, Jr.s November 15, 2021 Order of Dismissal. Undersigned counsel received notice of entry of the order on November 21, 2022. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

November 21, 2022

William Ray, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Horry County Circuit Court Clerk
PO Box 677
Conway, SC 29526

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

John F. McArthur, #180570,)
Applicant,)

Case No.: 2019-CP-26-5881

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
HORRY COUNTY
2022 NOV 15 P 2:03
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed September 18, 2019. Respondent made its return on May 6, 2020, requesting a hearing on the State's motion to dismiss be convened. A hearing on the State's motion to dismiss was held on February 3, 2022, virtually via WebEx. James K. Falk, Esquire, represented Applicant. William H. Ray, Esquire, represented Respondent.

After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to equitable tolling of the statute of limitations. Accordingly, this Court summarily dismisses the application without a full evidentiary hearing. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. During the March 2008 term, the Horry County Grand Jury indicted Applicant for Armed Robbery (2008-GS-26-1092) and Threatening a Public Official (2008-GS-26-1096). Kia Wilson, Esquire, represented Applicant. On July 21, 2008, Applicant pleaded guilty to armed robbery pursuant to *Alford v. North*



Carolina¹ before the Honorable Steven H. John, Circuit Court Judge. The threatening a public office charge was dismissed, *nolle prosequi*. Judge John sentenced Applicant to twenty years' imprisonment for armed robbery. Applicant did not appeal his conviction or sentence.

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective assistance of counsel."
 - a. "My attorney did not contact any witnesses."
 - b. "My attorney let the State charge me with a wrong first name."
 - c. "Fictitious name."
2. "I'm innocent of charge."

Under question sixteen in the application, when asked why the grounds presented above were not previously presented, Applicant stated:

1. "Did not know I could."
2. "Sentenced me under a fictitious name."
3. "I am a mental health recipient."
4. "Did not understand the sentence or charge."

Additionally, in a letter to the "Attorney General Clerk", dated March 20, 2020, Applicant asked for an attorney, stating he "never had the fair bite of the apple" because he has a low mental capacity and that Counsel told him he filed a PCR application, but did not.²

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¹ 400 U.S. 25 (1970).

² Applicant submitted a letter to Respondent to the clerk of court, dated March 20, 2020. In the letter, he alleged he has a low mental capacity. Respondent interprets this allegation as a request for equitable tolling pursuant to *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009). Respondent has attached a letter concerning this matter to the return and motion to dismiss, asking the court how they would like to proceed.

This Court held a hearing on the State's motion to dismiss. The only issue before the Court at that hearing was whether Applicant was entitled to equitable tolling under *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009). All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are Applicant's Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, and the current PCR Application. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

The Court finds that this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code § 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, South Carolina Code Annotated 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

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the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant entered an *Alford* plea on July 21, 2008. He did not file an appeal thereafter. Thus, the PCR Application was due on July 22, 2009. This application was filed on September 18, 2019, *over ten years after the statutory filing period.*

Further, Applicant failed to meet his burden of proof in establishing he is entitled to equitable tolling. This Court finds Applicant’s PCR Counsel credible in his statement that the doctor he applied for funding for could not support a *Ferguson* claim. Thus, this Court concludes that though Applicant seemingly struggled with mental health issues, they did not render him incompetent. *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (holding the tolling of the PCR statute of limitations is warranted if an applicant can establish his mental incompetence preventing timely filing of his application). Because Applicant failed to meet his burden of proof in showing he was mentally incompetent during the period in which he could timely file a PCR application, he is not entitled to equitable tolling. Therefore, the application is dismissed for untimeliness.

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Conclusion

Based on all the foregoing, this Court finds that the matter is untimely and should be summarily dismissed. This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry’s written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Your

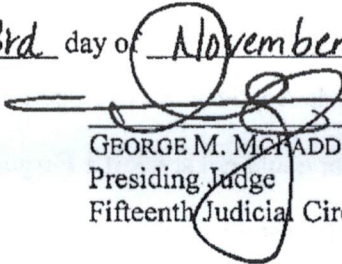


attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 3rd day of November, 2022.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Fifteenth Judicial Circuit

Sumter, South Carolina.

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