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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) TWEFTH JUDICIAL CIRCUIT

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James Edgar Hutchinson, #258003

) CASE NO. 2021-CP-21-1712

) DORIS MOULOS O'HARA
) CCOP & GS
) FLORENCE COUNTY, SC

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

CERTIFIED: A TRUE COPY
Doris Moulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY S.C.

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by James Edgar Hutchinson (Applicant) filed on August 5, 2021. The State made its return on October 28, 2021, requesting this action be summarily dismissed because the circuit court had jurisdiction to accept Applicant's guilty plea; the application was filed after the statute of limitations had expired; and for failure to state a cognizable claim for relief.

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 signed December 8, 2021, and filed December 15, 2021, 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 Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a certificate of service dated February 10, 2022, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant at the Lee Correctional Institution.

Applicant submitted multiple responses to the Florence County Clerk of Court to include: (1) "Affidavit of Merits" numbering sixteen pages and dated December 21, 2021, and filed December 28, 2021; (2) "Affidavit of Merits" numbering six pages dated December 21, 2021, and

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filed on December 28, 2021.¹ In Applicant's filings, he argues that his "conviction was obtained in violation of the Constitution of the United States, the S.C. Constitution, and the laws of this state and [he is] suffering persistent effects and collateral consequences as [he has] alleged in [his] post-conviction application due to ineffective assistance of counsel in this invalid conviction, and States proposed dismissal is improper." Ultimately, Applicant's filings argue the jurisdictional grounds of his convictions which were raised in his PCR application.

This Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because the circuit court had jurisdiction to accept Applicant's guilty plea; the application was filed after the statute of limitations had expired; and for failure to state a cognizable claim for relief. Before the Court will hold an evidentiary hearing, 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). Applicant has failed to make such a showing based on the information set forth in his response, and, therefore, he is not entitled to an evidentiary hearing in this matter. 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 the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

¹ Notably, it appears Applicant has filed the same, or very similar, filings in his other PCR matter. (2021-CP-21-1711)

This Court hereby advises Applicant 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 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 22nd day of November, 2022.



D. CRAIG BROWN
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina.

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FLORENCE COUNTY SC

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

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DORIS T. BOG CHARA
James Edgar Hutchinson, #258003,) Case No.: 2021-CP-21-1712
FLORENCE COUNTY, SC)

Applicant)

v.)

State of South Carolina,)

Respondent.)

CONDITIONAL ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by James Edgar Hutchinson (Applicant) on August 5, 2021. The State made its return and moved to summarily dismiss the action because the circuit court had jurisdiction to accept Applicant's guilty plea, the application was filed after the statute of limitations had expired, and for failure to state a cognizable claim for relief. For the reasons discussed below, this Court grants the State's motion to summarily dismiss the PCR action.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court.¹ Applicant was indicted at the January 1995 term of the Florence County Grand Jury for second degree burglary and grand larceny (1995-GS-21-0110). The charges stem from Applicant's arrest for forgery, where law enforcement found the burglary victim's book of checks, which Applicant had been using fraudulently, and the burglary

¹ Applicant is currently incarcerated due to a third and separate burglary offense (2018-GS-21-1520; -1523). Applicant filed this application because the underlying conviction to this matter was legally used to enhance his current sentence pursuant to 16-11-311(2) of the South Carolina Code. ("the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]")

CERTIFIED TRUE COPY
Doris T. Bog Chara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

victim's identification card. Represented by Steven Fowler, Esquire, Applicant appeared for a plea on March 22, 1995. Applicant pleaded guilty to second degree burglary. The State dropped the remaining charges. Applicant was sentenced him to six years' imprisonment. Applicant did not appeal.

II. CURRENT APPLICATION

Applicant *untimely* commenced this PCR action on August 5, 2021. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsels failure to investigate Illegal arrest, search and seizure, accepting the states version of facts prejudiced my case by telling me the evidence and statements would be used against me and my illegal detention placed me in a position where I felt I had no choice but to plead guilty by a misapprehension of law in my case.
 - b. If counsel had filed a motion to suppress the ID and any other evidence would have been excluded (statements), no other independent evidence
 - c. Counsel failed to preserve a 4th Amendment claim for a notice of appeal.
2. Involuntary Guilty Plea and Lack of Jurisdiction
 - a. Guilty plea involuntarily, due to the fact the law enforcement, counsel, and the prosecution all led me to believe I lived in Florence County, so I never knew I had any valid defense or territorial jurisdiction issues . . . obtained unconstitutionally and still causing prejudice and persistent lingering effects due to ineffective assistance of counsel.
 - b. My address of Rt. 8-box-143 Bar Ranch Rd. is really 344 Bar Ranch Rd. Darlington, SC.

As relief, Applicant requests his sentence be vacated and invalidate for support enhancement purposes to stop its prejudice in Applicant's current incarceration for his third

burglary conviction (2018-GS-21-1520; -1523).² Before this Court and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant material.

III. Motion to Dismiss

The State moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code (2014) on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requested the Court not appoint counsel in this matter, and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for so doing. 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); *Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court*, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). This Court has reviewed the pleading and the record in this case and finds there is no genuine issue of material fact. Therefore, summary dismissal is appropriate. Set forth below are the Courts findings as to each issue:

² The State noted in its return and motion to dismiss that this is not a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This is discussed in the "Failure to State a Claim" subsection below.

i. Allegation of Lack of Jurisdiction

Applicant alleges the trial court did not have jurisdiction to accept his guilty plea because Rt. 8-box 143 Bar Ranch Rd. is now referred to as 325 Bar Ranch Rd., which Applicant claims is in Darlington County.³ However, this Court finds this allegation is without merit.

In South Carolina, jurisdiction, the basic authority of a court to hear and exercise judgment over a criminal matter, is based upon two considerations; territorial jurisdiction, and subject matter jurisdiction. The territorial jurisdiction of a municipal court is limited to the boundaries of the municipality. Under section 22-3-710, "All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon, and only which, shall a warrant of arrest issue." Under section 14-25-45, "Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. . . ." *Town of Honea Path v. Wright*, 194 S.C. 461, 9 S.E.2d 924 (1940); *State v. Fennel*, 263 S.C. 216, 209 S.E.2d 433 (1974).

In the present case, the indictments clearly cite that the offenses occurred within Florence County. Additionally, the arrest warrants were issued by a Florence County judge. Therefore, the trial court judge clearly had jurisdiction. Applicant has provided no proof except his own assertion that the address is in Darlington County. Before the Court will hold an evidentiary hearing, 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). This

³ This was where Applicant was arrested for forgery and where law enforcement found the book of checks and the victim's identification card, which was the evidence used to bring the charges of the underlying conviction.

Court finds Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter shall be summarily dismissed with prejudice.

ii. Statute of Limitations

Applicant's allegations shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act⁴ (the Act). Specifically, the Act requires:

An application for relief filed pursuant to this chapter *must* be filed within *one year after the entry of a judgment . . . or within one year after the sending of the remittitur*

S.C. Code Ann. § 17-27-45(A) (emphasis added).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (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, 489, 445 S.E.2d 638, 639 (1994). Further, 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 . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

In the present case, Applicant pleaded guilty on March 22, 1995, and he did not pursue a direct appeal. The application was, therefore, due on or before August 8, 1990. This application was filed on August 5, 2021, *well after* the requisite filing period expired. Accordingly, Applicant's allegations shall be summarily dismissed because the action is untimely.

⁴ S.C. Code Ann. § 17-27-10 to -160.

iii. Failure to State a Claim

Additionally, this Court finds Applicant's action shall be summarily dismissed for failure to state a cognizable claim for relief. See Rule 12(b)(6), SCRCP (stating a defending party may move for summary judgement based on the plaintiff's failure to "state facts sufficient to constitute a cause of action"). Further, the application shall be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160.

An applicant may commence a post-conviction relief action on the following grounds:

That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. See *Roscoe v. State*, 345 S.C. 16, 20,

546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

This Court finds Applicant’s allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). “The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is *not* rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences.” *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991) (emphasis in original). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. *Id.*; see also *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973) (“[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea . . .”). “[A]side from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence . . .*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original).

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. See *State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect

on the range of the defendant's punishment." *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973).

The fact that a conviction for a violent offense may be used to enhance a subsequent conviction is a collateral consequence of a guilty plea. *Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997). Applicant's allegation is only that his prior burglary, the conviction he is challenging in this application, was used to enhance the sentence arising out of his subsequent burglary conviction pursuant to section 16-11-311(2) of the South Carolina Code is a non-collateral attack on his conviction. As such, this allegation and every part of the application based thereupon shall be dismissed pursuant to Rule 12(b)(6), SCRCP.

IV. CONCLUSION

Pursuant to subsection 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, factual or legal, with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Michael D. Davidson, Esquire
PCR Division – Twelfth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Florence County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, 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 8 day of Dec, 2021.

Spencer, South Carolina

Michael Nettles
MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

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DOMINIC J. C. HARRIS
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James Edgar Hutchinson #254003
Evans Court, Inst. Waxhaw - B-238
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Bennettsville, S.C. 29512



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JAN 04 2023

S.C. SUPREME COURT

The Honorable
Patricia A. Howard
Clerk of Court
for
South Carolina Supreme
Court
P.O. Box - 11330
Columbia, S.C. 29211

