



ALAN WILSON
ATTORNEY GENERAL

February 10, 2022

The Honorable Christy M. Gray
Marion County Clerk of Court
PO Box 295
Marion, SC 29571

Re: Jerry Lee Franklin, Jr., #132862 v. State of South Carolina
2021-CP-33-0216

Dear Ms. Gray:

Enclosed please find the Final Order of Dismissal signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Michael D. Davidson
Assistant Attorney General

MDD/em

cc: Jerry Lee Franklin, Jr., #132862

RECEIVED
CHRISTY M. GRAY
CLERK OF COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
)
Jerry Lee Franklin, Jr., #132862,)
)
Applicant)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-33-0216

FINAL ORDER OF DISMISSAL

FILED
OCT 20 2021
CLERK OF COURT
12th JUDICIAL CIRCUIT
COLUMBIA, SC

This matter comes before the Court pursuant to an application for post-conviction relief filed by Jerry Lee Franklin, Jr. (Applicant) May 12, 2021. Respondent made its Return and Motion to Dismiss on October 22, 2021, requesting the application be summarily dismissed because it was filed after the statute of limitations had expired; it was successive; it is barred by the doctrine of res judicata; Applicant's indictment allegation is not proper for PCR; it fails to make a prima facie showing the trial court lacked subject matter jurisdiction; and Applicant has failed to make a prima facie showing he is entitled to relief based on his claim that his fourteenth amendment due process rights were violated because he denied appointment of parole revocation counsel..

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 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 dismissal should not become final.

Applicant was served a copy of the unsigned Conditional Order of Dismissal when it was sent to this Court for review and signature on October 20, 2021. Prior to the Conditional Order of Dismissal being filed, Applicant filed a response to the Conditional Order of Dismissal on November 4, 2021. In his response, Applicant argues:

1. Respondent failed to acknowledge before this court that applicant filed and obtained an entry of default against respondent in this present application prior to respondent asking for an extension of time to file its return.
2. Applicant further contends that Respondent's conditional order of dismissal and motion for dismissal is not properly before this court absent Respondent's failure to respond to applicant's motion for an entry of default.

Applicant claims the Conditional Order of Dismissal is not properly before this Court because of his motion for default judgement. However, no judgment by default shall be entered against the State of South Carolina unless the claimant establishes his claim to relief by evidence satisfactory to the Court. Rule 55(e), SCRPC. For an applicant to be granted default judgment in post-conviction relief, he must show prejudice from the State's delay in failing to timely answer his application. *See Kneece v. State*, 269 S.C. 177, 236 S.E.2d 745 (1977); *Herring v. State*, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an applicant must show that his application has merit. *Herring*. Furthermore, compliance with the statutory time limits is discretionary with the trial court. *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973).

This Court finds Applicant has failed to meet his burden as he has failed to show his application has merit. Applicant cannot show prejudice because his claim is not only barred by the statute of limitations but is also successive and barred by *res judicata*. Therefore, this Court denies Applicant's motion for default.

Accordingly, this Court—having reviewed Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings—finds the Conditional Order of Dismissal is properly before the Court. This Court further finds a sufficient reason has **not** been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the application for post-conviction relief is hereby denied and dismissed with prejudice.

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 7 day of February, 2021.



MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit Court

Florence, South Carolina

FILED
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CLERK OF COURT