

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )  
Curtis Ray Green, SCDC #366229, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2022-CP-38-00681

**CONDITIONAL ORDER OF DISMISSAL**  
FILED FOR RECORD  
WINNIEFA B. CLARK  
MAR 27 PM 2:18  
CLERK OF COURT  
ORANGEBURG, SC

This matter comes before the Court by way of post-conviction relief (PCR) filed by Applicant Curtis Ray Green on May 12, 2022, and received by the South Carolina Attorney General’s office on May 13, 2022. In response, Respondent the State of South Carolina filed its return<sup>1</sup> and moved to dismiss the application as untimely pursuant to Section 17-27-45 and Section 17-27-70 of the South Carolina Code.

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In July 2020, the Orangeburg County Grand Jury indicted Applicant for murder (2016-GS-38-01149), escape (2018-GS-38-01508), and escape, attempted escape of possess tools to escape from prison, recaptured (2020-GS-38-01138). Applicant waived presentment of all charges. Brett Perry, Esquire, represented

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<sup>1</sup> Respondent’s return was due to be filed within sixty days of receipt. *See* Rule 12(a), SCRCP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts Respondent’s return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Applicant. Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On December 17, 2020, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty to voluntary manslaughter – the lesser-included offense of murder – pursuant to *North Carolina v. Alford*<sup>2</sup>. Applicant further pleaded guilty, as indicted, to two counts of common law escape. Multiple other charges including assault and battery – third, assault and battery – first, multiple armed robberies and car jackings, a failure to stop for a blue light charge, and an unlawful carrying of a pistol charge were *nolle prossed* pursuant to the plea. The State requested the plea court take into consideration Applicant's fourteen-year federal sentence set to begin after Applicant's release from State custody; the State further requested Applicant's aggregate State and Federal sentencing range be between twenty-five and thirty years.

Judge Dickson sentenced Applicant to concurrent terms of ten years' imprisonment each of the escape charges and thirteen years' imprisonment for the manslaughter charge. Judge Dickson ordered Applicant's sentence for manslaughter run consecutively to his fourteen-year Federal sentence. Applicant did not appeal his plea or sentence.

## **II. Summary of Fact Presented at Guilty Plea Hearing**

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

MR. SCOTT: Thank you, Your Honor, I'll just kind of go chronologically. The homicide plea, the manslaughter plea, Your Honor, that incident took place on March 20, of 2015. It happened around 6:00 in the morning. The victim, in that case, Your Honor was Trajan Jenkins. He was about 34 years of age at that time of this incident. Your Honor, this incident took place at 608 Shadow Lawn Drive in Orangeburg. Deputies responded to a 911 call regarding shots being fired. When they arrived, Your Honor, they located the victim lying on the ground near the steps to his apartment. Your Honor, he was unresponsive. There was a large amount of blood coming from his head. He was pronounced dead there at the scene. Your Honor, the victim's girlfriend, Andrea Fogle, she stated that the victim got up that morning; and he said he was going to the ATM before going to

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<sup>2</sup> 400 U.S. 25 (1970).

work in Cameron. Soon after, Your Honor, the victim--he exited the apartment, and thereafter Ms. Fogle said she heard a commotion. It sounded like people arguing. She looked out the window, Your Honor, and she saw one unknown individual standing between her car and the victim's car pointing a gun. She said the person was wearing a dark hoodie. She said at that point, Your Honor, she saw a gun go off, after which she got on the floor. And she remained on the floor until the police were called. There was another witness, Your Honor, that lived in the apartment complex. She said she heard a gunshot. She told law enforcement she looked outside. And when she looked outside all she saw was the victim laying on the ground. There was a third witness, a gentleman by the name of Myson--I guess it's Myson, M-Y-S-O-N Wally. He heard what he believed to be the victim leaving to go to work. He said he didn't hear the victim's car crank up. Instead he heard some arguing followed by a single gunshot. None of these three witnesses, Your Honor, have ever been able to pick anyone out of photo lineup. Your Honor, crime scene units from Orangeburg County Sheriff's Office, they responded to the incident location. During their investigation, they discovered that the ignition to the victim's Ford Crown Victoria, appeared to be tampered with, including part of the ignition appeared to be lying on the floorboard of the victim's vehicle, which I would submit, Your Honor, is consistent with the probability that the victim interrupted someone who was trying to hotwire his car. In fact, the victim's girlfriend's car had been stolen within the previous week. Her car, Your Honor, was a green 2004 Ford Focus. And this will become more relevant in just a minute.

Your Honor, for a lengthy period of time, this case went cold. There were no leads. In fact, it wasn't until 15 months later, on June 3, of 2016 when Lieutenant Shumpert met with a witness by the name of Damion Brown. Mr. Brown was being detained in the Orangeburg County Detention Center. Brown told investigators that sometime prior to the murder, he, Mr. Brown, and two other individuals, stole a green car on Shadow Lawn, and took it back to Roosevelt Gardens. This car appears to have been the car of the victim's girlfriend, Ms. Fogle. Upon returning to Roosevelt Gardens, Brown said that Curtis Green, aka Razor, wanted someone to go back and get the Crown Victoria that was parked at those apartments. Brown said, the day before the murder, Mr. Brown was arrested for possession of stolen motor vehicle, for that green Ford Focus. Mr. Brown told law enforcement he did not see Curtis Green anymore until one day in July of 2015, so that would be several months after the incident, when they were both in the Orangeburg County Detention Center. Brown said he asked the Defendant, Mr. Green, if he killed the victim while trying to steal that Crown vic. According to Mr. Brown, Mr. Green initially said no. And then he laughed and said yes, he did. According to Mr. Brown, the Defendant, Curtis Green, said that he, and an individual by the name of Talmadge Sprinkle, went to steal the Crown vic, and that they were in the process where the victim came outside and confronted them. Mr. Brown said that Green said that the victim kind of rushed towards him. And according to Brown, Mr. Green said he was able to step to the side and shoot the victim. So after Mr. Brown gave out the name of this Defendant, as well as Talmadge Sprinkle, three days later, investigators were able to locate Mr. Talmadge Sprinkle. Sprinkle gave a statement and he advised kind of the following: He said he had been in Roosevelt Gardens with Damion

Brown. He said that Alex Green and Curtis Green showed up with a set of keys and told them to go get a car on Shadow Lawn. He said they went and stole that green car that I referred to earlier. He said a couple of days later Curtis Green picked him up, Talmadge Sprinkle, then said he wanted them to go get that Crown vic. Sprinkle said while they were there, the victim came out of the apartment. Sprinkle said they ran. He said while running, Mr. Sprinkle said Green pulled out a gun and then Mr. Sprinkle said he heard a gunshot. Mr. Sprinkle said the Defendant had a .9-millimeter handgun. Sprinkle was able to show law enforcement the incident location without any assistance from law enforcement. He also picked Mr. Green out of a photo lineup on June 6, of 2016.

Investigators, Your Honor, they also spoke with an individual by the name of Cameron Ryan. He said he was with Damion Brown and Talmadge Sprinkle when they stole the green car, about a week before the incident. He said he kind of cooperated; but the next day the Defendant was talking about stealing the Crown vic from the same location. He said Mr. Green mentioned being able to hotwire the Crown vic. Mr. Ryan was shown a photo lineup on June 9, 2016. He picked the Defendant out as the person, quote, who said he was coming to get a Crown vic. The Defendant, Your Honor, he was then arrested on June 10, 2016, based on the statements from Mr. Ryan, Mr. Sprinkle and Mr. Brown. That is the evidence in that homicide. Mr. Green, Your Honor, he remained in jail until the next incident, which is one of the escape charges. That took place on May 19, of 2018. While Mr. Green was being housed at the Orangeburg County Detention Center, here in Orangeburg, he was able to escape during a riot. One of the corrections officers, Johnny Simmons, he was working in a control room when he was assaulted by multiple inmates, kind of created a riot. And during that riot Mr. Curtis Green, Mr. Tyshon Johnson and Mr. Otis Goodwine were able to escape. Mr. Green, Your Honor, he remained escaped for almost exactly two months. He was rearrested on July 17, 2018 after he committed multiple armed robberies and carjackings in Orangeburg and Calhoun Counties. Those armed robberies and carjackings, those are the subject of his Federal convictions. The second--or the last charge that he's pleading to is common law escape. That is from this year, May 16, of this year. That is an attempted escape. Again, the Defendant was being held in the Orangeburg County Detention Center here in Orangeburg. And basically, Your Honor, he destroyed a cell. He was able to chip away at the bricks and everything and create large holes in his cell. He was actually able to connect his cell to another cell and they were actually working on a hole, I believe, to get to the outside of the detention center. So that is an attempted escape. So those are the three factual basis for the plea.

(Plea Tr. 9-12).

### **III. Allegations Raised and Relief Sought in Current Post-Conviction Relief Action**

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following<sup>3</sup>:

1. Involuntary guilty plea
  - i. "I took an Alford plea"
    1. "I took it in the state of mind of being deceived".

As relief, Applicant requests:

"I would like to withdraw this plea due to the fact that I received ineffective counsoulng and unknowing/ unwilling took this plea under the impression of an illusion".

Before this Court are the Orangeburg County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the guilty plea transcript; and the records of the current PCR action, including Respondent's return and motion to dismiss.

### **IV. Motion to Dismiss**

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. This Court finds there is no genuine issue of material fact which would necessitate an evidentiary hearing. *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). Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

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<sup>3</sup> Applicant alleges he attempted to file a prior PCR application; however, Applicant does not provide any explanation as to why no prior applications were filed with the Orangeburg Clerk of Court, nor does Applicant allege any known grounds entitling him to equitable tolling. Rather, Applicant merely states: "I dont know if yall received [the initial application] or not".

### *Summary Dismissal Based on Statute of Limitations*

This Court finds this 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:

- (A) 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 upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A)–(C).

Our 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. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, 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 . . . there is no genuine issue of material fact and

the moving party is entitled to judgment as a matter of law.” See *Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”); *Sutton*, 361 S.C. at 648, 606 S.E.2d at 781 (declining “to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application”).

In the present case, Applicant was sentenced on December 17, 2020. Applicant did not appeal from his convictions or sentences. This application was filed on May 12, 2022,— almost *six months* after the requisite filing period expired. Accordingly, this action must be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. See *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant’s misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

Moreover, Applicant has not alleged any claims based on a change of law or statute or alleged any newly discovered evidence. Therefore, Applicant has failed to comply with the filing requirements under Section 17-27-45(B-C). Accordingly, this application is untimely pursuant to Section 17-27-45 and must be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

*[conclusion and signature on following page]*

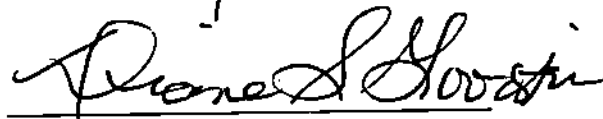
V. Conclusion

Pursuant to S.C. Code Ann. § 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 with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Samantha J. Weidauer  
Post-Conviction Relief Division – 1<sup>st</sup> Circuit  
Post Office Box 11549  
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 23 day of March, 202~~2~~<sup>3</sup>



DIANE S. GOODSTEIN  
Chief Administrative Judge – Common Pleas  
First Judicial Circuit

St George, South Carolina