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JUL 17 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

Bobby Ray Gladden, #231803,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE SIXTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-12-00366

) **FINAL ORDER OF DISMISSAL**

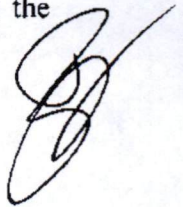
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This matter is before the Court by way of an untimely application for post-conviction relief (PCR) filed by Bobby Ray Gladden (Applicant) on August 22, 2022. Respondent made its return and moved to summarily dismiss the action as procedurally barred by the statute of limitations and successiveness. After review of the record and pleadings, this Court agreed this application should be summarily dismissed and provisionally dismissed the action by way of a Conditional Order of Dismissal filed on December 29, 2022, giving Applicant twenty days from the date of service of said Order to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated January 18, 2023, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant responded to the Conditional Order of Dismissal and objected to dismissing the application, contending “he was and still is incompetent to understand what the uniform [PCR] Act really mean[s],” and the statute of limitations should be tolled pursuant to Ferguson v. State, 382 S.C. 615, 877 S.E.2d 600 (2009) (providing that statute of limitations for PCR should be tolled when an applicant demonstrates that failure to timely file the PCR application was due to mental incompetency). Applicant likewise opposed dismissal on the basis of successiveness, averring “no one has ever conduct[ed] any test as to [his] mental condition since trial and even at trial the

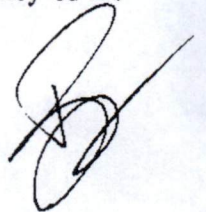


doctor's were not present." He asserts he had a sufficient reason for not raising his allegations in his prior PCR application because of his "lack of understanding." Specifically, he contends he "did not have the ability to understand that the word 'murder' must be in the indictment." Applicant also filed a motion requesting funding for a mental evaluation.

This Court finds Applicant has not set forth a valid reason his application should not be barred by the statute of limitations or as successive. Although Ferguson provided for equitable tolling when an Applicant could demonstrate his untimely filing was the result of mental incompetency, the facts underlying Ferguson applied to an initial application for PCR—not a subsequent application. See Ferguson, 382 S.C. at 619-20, 677 S.E.2d at 602 ("If Ferguson was prevented from filing for PCR by reason of his mental incompetency, then he has not, and will not, receive his one full bite at the apple."); id. at 619, 677 S.E.2d at 602 ("Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple." (internal quotation marks omitted)). Unlike the applicant in Ferguson, Applicant has had a full bite of the apple—through his prior direct appeal, PCR action, and appeal of the denial of his first PCR action. Ferguson is factually distinct and does not set forth a basis for tolling the statute of limitations here.

Further, Applicant has not set forth a valid reason why his application should not be barred as successive. Applicant's assertion that he was unaware of an alleged issue with the indictment and only recently discovered that issue lacks merit. Applicant was present for his trial and appealed. After Applicant's appeal was dismissed, Applicant filed his first PCR application for relief. In Applicant's first PCR application and while that application was litigated, Applicant had access to his trial and appellate records. See State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981). This Court finds all claims were known or should have been known during the pendency of his

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first PCR action, and, accordingly, this action is successive and not timely under S.C. Code Ann. § 17-27-20(C). See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Applicant has failed to overcome the procedural threshold of providing specific reasons, factual or legal, why the application should not be dismissed.

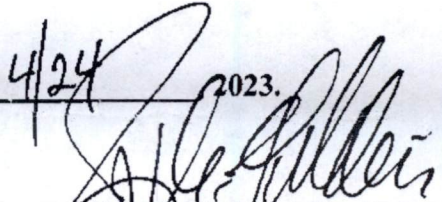
Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such showing based on the information set forth in his response; 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.

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**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief (2022-CP-21-1221) is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant that should he wish to procure appellate review, he must file and serve a notice of appeal within thirty days of this Order. 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 \_\_\_\_\_ day of 4/24 2023.

  
\_\_\_\_\_  
BRIAN M. GIBBONS  
Chief Administrative Judge  
Sixth Judicial Circuit

\_\_\_\_\_, South Carolina