

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio Demazio Scott, SCDC #320475,

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No.: 2021-CP-27-00444
)

) **CONDITIONAL ORDER OF DISMISSAL**
)

FILED
JASPER COUNTY
CLERK OF COURT
022 FEB 23 AM 8:48

This matter comes before the Court by way of post-conviction relief application filed by Applicant Antonio Demazio Scott on October 12, 2021. In response, Respondent the State of South Carolina filed its return¹ and moved to dismiss the application as untimely pursuant to Section 17-27-45 of the South Carolina Code.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2011 term, the Jasper County Grand Jury indicted Applicant for one count of murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant on the charge. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years for murder.

¹ Respondent's return was due to be filed within ninety days of receipt. *See* Rule 12(a), SCRPC ("[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.") However, 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 grants the State's request and accepts this 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 filed a timely notice of appeal, which was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Scott*, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing², which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavyset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. *State v. Scott*, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted

² The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

back to the circuit court on December 16, 2015. The instant application for post-conviction relief was filed on October 12, 2021.³

II. Summary of Testimony Adduced at Trial

On the night of March 19, 2011, the victim Cynthia Nelson (Cynthia) called police in reference to Applicant, her daughter's boyfriend and the father of Cynthia's grandchild, being outside the front door of her apartment trying to break in. (R. 71-72). Cynthia was outside her home in her car when she witnessed Applicant at the front door of her apartment and called police using her cell phone. (R. 17-23, 71-73). Ridgeland City Police Officers Kevin Smith and Rob Nelson responded to the scene; however, by the time the officers arrived Applicant was gone. (R. 71-72). When Applicant realized the victim had called police, he threw away the knife he was carrying and hid in a nearby garbage dumpster. (R. 72, 75-85). At Cynthia's request, Officer Smith searched her home to make sure Applicant was not in her home and it was safe for Cynthia to enter. (R. 72-73). Officer Smith eventually talked to Applicant on the phone, and Applicant admitted only that he had called Cynthia. (R. 72).

The following day, March 20, 2011, Ms. Monique Chester, an elderly resident of Baytree Apartments, was attending a wake at a residence located behind Baytree Apartments. The wake was for Applicant's cousin who had recently died. While there, Ms. Chester overheard Applicant talking about what had occurred the previous evening. Applicant told a fellow family member that

³ Applicant sent a letter to the Supreme Court of South Carolina, received on September 13, 2021, requesting a copy of his PCR application. In that letter Applicant claims he mailed a copy of his application to the Jasper County Clerk of Court in January 2016. Applicant further contends he sent amendments to that application in April 2016. In the letter, Applicant states he has not received any replies to letters he has mailed to the Jasper County Clerk of Court. Upon receipt of Applicant's letter, the Supreme Court forwarded it to the Jasper County Clerk of Court on September 15, 2021. By letter dated September 30, 2021, the Jasper County Clerk of Court responded to Applicant and advised him their office had reviewed their records; however, their records did not indicate any application was ever received by or filed with the Jasper County Clerk of Court.

he had tried to kill Cynthia the night before, but she had called the police. Applicant stated he had hid in a dumpster to avoid being arrested and had thrown the knife somewhere. Applicant also stated that the next time he saw Cynthia he was going to stab her. (R. 75-85).

On the same date, March 20, 2011, the victim's daughter, Akera Nelson (Akera) and Cynthia drove to Applicant's sister's (Shareema) apartment because Applicant had requested that the victim's daughter [Akera] bring their son to him. Shareema also lived in Baytree Apartments. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Akera and the child entered Shareema's apartment while Cynthia remained in the vehicle. Cynthia's daughter, Akera, saw a knife in Applicant's hand when she entered Shareema's apartment and Applicant got up of the couch. Applicant knew Cynthia was outside in the vehicle and stated to Akera with the knife in his hand: "Is this how you wanna do things?" "You gonna let your mom come between us?" Akera told Applicant: "It's not that serious. Chill out." Akera continued to try and calm Applicant down. About one minute later, Cynthia got out of the car and entered the apartment where her daughter and grandson were. Cynthia told Applicant she was not going to put up with him beating her daughter any more.⁴ (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant started arguing with Cynthia. At that point, Akera could no longer see the knife in Applicant's hand. Akera then witnessed Applicant strike Cynthia one time in the face/neck area with his fist. Applicant's sister, Shareema, testified at trial that Applicant struck the victim in the face/neck area with the open part of his hand. Neither Akera nor Shareema saw Applicant and Cynthia wrestling or tussling before Applicant struck Cynthia. After Applicant struck Cynthia, Cynthia staggered forward and collapsed on the couch in the living room unable to speak. Blood

⁴Applicant was on probation at the time of trial for CDV 2nd Offense. Akera was the victim in that offense.

was pouring from Cynthia's neck. It was subsequently discovered that Applicant had not just struck Cynthia with his fist but had actually stabbed her with the knife. The knife wound penetrated Cynthia's neck approximately two and one half inches and was stopped by a bone in her neck. The wound was downward and toward the spinal column. The knife wound severed an artery in Cynthia's neck resulting in a severe loss of blood, cardiac arrest, and eventual death.⁵ (R. 86-98, 105, 108, 115-25, 58-62, 64-65).

Cynthia's daughter, Akera, then went to the kitchen, obtained a mop handle, and swung it at Applicant because he had attacked her mother. When Akera stopped swinging at Applicant with the handle, Applicant took off his shirt and used it to try to stop the bleeding from Cynthia's neck. Applicant then fled the scene going behind Baytree Apartments in the direction of where the wake had been. Akera followed Applicant briefly but did not leave the scene. (R. 86-98).

Applicant's sister, Shareema, called 911. (R. 38-44). Applicant's sister was asked by the 911 operator what happened to the victim, and Shareema stated *someone stabbed her in the neck*. (State's Ex. 1, 1st call). When Applicant's sister was specifically asked who stabbed the victim, Shareema did not answer. She then stated she needed to walk outside her home.

The victim's daughter, Akera, then called 911. (R. 38-44). She informed the 911 operator her boyfriend, Applicant Antonio Scott, had struck her mother with his fist but she did not know what he had in his hand at the time. She informed the 911 operator that her mother was bleeding profusely. She also gave police a description of Applicant and where he had run to. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

⁵The victim, Cynthia, was first taken by E.M.S. to a local hospital and then, because of her condition, she was transported to a hospital in Savannah, Georgia. She died there on March 21, 2011, as a result of the stab wound to her neck just below the ear at the jaw line. (R. 44-59, 110-25).

When police arrived at the scene, Applicant had already fled. Officer Rob Nelson went behind the apartment to look for Applicant. When he approached a group of people behind the apartment complex [Applicant's family] he asked if they had seen Applicant and where he had fled. The individuals told Officer Nelson to leave. The murder weapon, the knife, was never found. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant was subsequently arrested on March 21, 2011, and charged with attempted murder.⁶ He was interviewed by police. Applicant claimed the victim, Cynthia, came to the apartment with a knife and attempted to stab him, whereupon he used a martial arts move to block the attempted stab, which resulted in the victim stabbing herself in the face/neck with the knife. Applicant asserted that as the victim came at him with her knife, he side-stepped her and pushed her elbow up and she stabbed herself with the knife still in her hand. (R. 95-104). Investigator Daniel Litchfield testified that Applicant stated as follows:

He [Applicant] told us he was there. He had an altercation, a verbal argument with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a - - for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Q: Now, did he physically show you how this occurred?

A: Yes, sir.

OFFICER LITCHFIELD: Be okay, Judge?

THE COURT: Sure.

A: Now, mind you, he was handcuffed, but he said he was standing there. She reached into her pocket, and when she went towards him, he said he did this and this. In other words, her arm went by him and he pushed the arm and she stabbed herself in the neck.

That was his statement.

(R. 99, ln. 22 - p. 100, ln. 15).

Investigator Litchfield further testified Applicant admitted he and the victim exchanged words before she was killed. (R. 100). And, Applicant was confronted with what Ms. Chester had

⁶The victim died later that day and the charge was upgraded to murder. (R. 95-104, 110-25).

related he had said at the wake before Cynthia's murder. Investigator Litchfield testified Applicant denied he had ever threatened the victim before, but admitted that he and the victim had argued before and they did not like each other. (R. 101). Investigator Litchfield further testified that police interviewed others regarding Cynthia's death, but they were unable to find anyone to corroborate Applicant's claim that Cynthia was the aggressor in the incident. (R. 101).

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

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

1. Ineffective assistance of counsel;
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";
 - b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
 - c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution";
 - d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
 - e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
 - f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
 - g. "Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument";
2. Brady violation;
 - a. "The Solicitor withheld evidence that was material" and
3. Violation due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".

Before this Court are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records

from Applicant's direct appeal, including the trial transcript; and the records of the current PCR action including Respondent's return and motion to dismiss.

IV. Findings of Fact and Conclusions of Law

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:

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 7, 2011, and the remittitur from the subsequent appeal was issued December 16, 2015. Pursuant to Section 17-27-45(A), Applicant had until December 16, 2016, to timely file his application for post-conviction relief challenging his convictions. Applicant did not file his present application until October 12, 2021—more than *four years* after the requisite filing period expired. Applicant failed to comply with the filing requirements under Section 17-27-45(A).

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 this Court intends to dismiss it for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

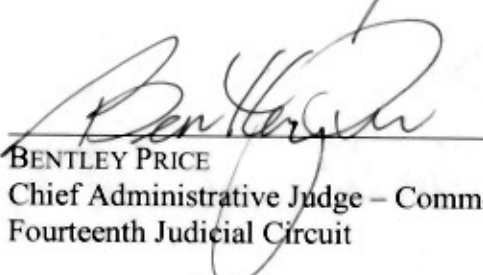
V. Conclusion

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 Jasper 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 – 14th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Jasper 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 11th day of February, 2022.


BENTLEY PRICE
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

Jasper, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 16, 2022

The Honorable Margaret Bostick
Jasper County Clerk of Court
Post Office Box 248
Ridgeland, South Carolina 29936

Re: **Antonio Demazio Scott, #320475 v. State of South Carolina**
Case No.: 2021-CP-27-00444

Dear Ms. Bostick:

Enclosed please find the original Conditional Order of Dismissal signed by the Honorable Bentley Price, 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,

Samantha J. Weidauer
Assistant Attorney General

SJW/vh

FILED
JASPER COUNTY
CLERK OF COURT
2022 FEB 23 AM 8:47



ALAN WILSON
ATTORNEY GENERAL

January 20, 2022

The Honorable Bentley D. Price
Fourteenth Circuit Chief Administrative Judge
100 Broad Street, Suite 432
Charleston, SC 29401

Re: Antonio Demazio Scott, #320475 v. State of South Carolina
Case No.: 2021-CP-27-00444

Dear Judge Price:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Jasper County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Samantha J. Weidauer
Assistant Attorney General

SJW/vh
Enclosure(s)

cc: Antonio Demazio Scott, #320475.

MAILED

FILED
JASPER COUNTY
CLERK OF COURT
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