

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Jerrell T. Brockman, #312862,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-12-00019
)

) **CONDITIONAL ORDER OF DISMISSAL**
)

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This matter comes before this Court pursuant to Applicant Jerrell T. Brockman's application for post-conviction relief (PCR) commenced on January 13, 2023. Respondent, the State of South Carolina, made its Return and Motion to Dismiss on March 17, 2023. This Court grants Respondent's Motion to Dismiss and finds Applicant's application for post-conviction relief is untimely, barred by the statute of limitations, and fails to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Chester County Clerk of Court orders of commitment. During the March 2018 term the Chester County Grand Jury indicted Applicant for Kidnapping (2018-GS-12-058), Armed Robbery (2018-GS-12-056), and Assault and Battery—1st Degree (2018-GS-12-057). On November 5, 7 – 8, 2018, Applicant proceeded to a jury trial before the Honorable Brian M. Gibbons. William Frick, Esquire, and Kay Boulware, Esquire, represented Applicant. Assistant Solicitors Candice Lively and Kaitlyn Easler of the Sixth Circuit Solicitor's Office prosecuted the case.

Applicant was found guilty as indicted on all counts, and Judge Gibbons sentenced him to

concurrent terms of twenty-five years for armed robbery and assault and battery, and 10 years' incarceration for kidnapping.

Counsel timely filed a notice of appeal on November 15, 2018. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. Brockman, 2021-UP-103 (S.C. Ct. App. 2021). The Remittitur was returned on April 21, 2021.

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ACTION BEFORE THIS COURT

In Applicant's *untimely* application for post-conviction relief, Applicant alleges he is unlawfully held in custody based on the following:

1. "Trial counsel's representation fell below the norm objective standard of reasonableness; occurred when the petitioner's trial counsel failed to object to the trial judge sentencing the petitioner to consecutive sentences."
2. "Petitioner's trial counsel made a highly prejudicial remark concerning the petitioner, guilty; 'I've been looking over there; I've been watching Jerrell this whole time he kind of looks like he did it.'"

Applicant seeks relief in the form of a new trial or resentencing.

Before this Court are the Chester County Clerk of Court records regarding the subject's conviction and sentence; Applicant's records from the South Carolina Department of Corrections; a complete record of Applicant's appeal; and the records of the current PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted by the parties, and the applicable law. Pursuant to South Carolina Code Annotated §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact, which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing the 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). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Summary Dismissal Based on Statute of Limitations

This Court finds the application shall be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.¹ 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.

The South Carolina 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 the statute of

¹ S.C. Code Ann. § 17-27-10 to -160.



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limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the 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 alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted as charged at a jury trial on November 5, 7 – 8, 2018. Applicant timely appealed, and the Remittitur was returned to the circuit court on April 21, 2021. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before April 21, 2022. Applicant did not file this PCR application until January 13, 2023, *eight months and twenty-three* days beyond the statute of limitations.

Moreover, S.C. Code Ann. 17-27-45(C) is inapplicable to Applicant's PCR application as Applicant does not present newly discovered evidence as required by the statute. McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013).

Accordingly, this Court finds the application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

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CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the 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 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 Chester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
D. Russell Barlow, II
Post-Conviction Relief Division – 6th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Chester 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 26 day of April, 2023.

Section 17-27-70(b)
~~BRENNAN GIBBONS~~ *cole* 2053
Chief Administrative Judge
~~Fifth~~ Judicial Circuit
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Chester, South Carolina

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