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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAN 29 2024

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

SC Court of Appeals

Robert L. Anderson, #133610,
Applicant,
v.
State of South Carolina,
Respondent.

Case No.: 2019-CP-23-03262

CONDITIONAL ORDER OF DISMISSAL

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Applicant filed an application for post-conviction (PCR) on June 6, 2019. Respondent has moved for summary dismissal alleging the records attached to the return and motion conclusively show that the application was not timely filed under S.C. § 17-27-45(A) and is barred from litigation under laches. Having reviewed the application, and the return and motion, this Court makes the following findings:

PROCEDURAL HISTORY

Applicant Robert L. Anderson is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. Applicant pled guilty to first degree burglary, GS-96-23-0018 (indictment number reported by Applicant) on January 1, 1996 and was sentenced to life imprisonment by Judge Frank McGowan, Jr. (Return Attachment 1). Applicant's SCDC public record and Attachment 1 shows he was sentenced to another life sentence for another count of burglary of a dwelling on the same day, but Applicant does not challenge that indictment in his application. (1995-GS-23-3618). (Return Attachment 1). Records do not exist showing whether Applicant directly appealed his conviction(s) or sentence(s) or not.

Applicant filed his first PCR application in 1996, and it was dismissed on February 18, 1999. Records of that application or disposition are not readily available. 1996-CP-23-03273;

Public Index. The Greenville County Records the State does have show that Applicant was sentenced to life imprisonment because he had two or more prior convictions for housebreaking and burglary or a combination of both. (See Return Attachment 1, p. 6).

ALLEGATIONS

Applicant is challenging only one of his burglary first degree convictions. He alleges that he is being held in custody unlawfully for the following reasons:

The applicant's life sentence for his burglary conviction was in violation of S.C. statutory law; exceeded the maximum authorized by S.C. statutory law; and the lawful sentence to which he was entitled to has expired to entitle him to release from his unlawful confinement.

Applicant alleges that because S.C. Code §17-558.4 (Applicant's cite) includes a "mercy proviso," he is entitled to 30 years imprisonment instead of life. He cites *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273 (1948) in support of his argument.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. § 17-27-70(c), this Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. "Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief." *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). This is such a case. Petitioner failed to timely file his action.

S.C. Code § 17-27-45(A) provides:

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 appeal, whichever is later.

Applicant's plea was entered and he was sentenced on January 1, 1996. Therefore, he had until January 1, 1997, in which to timely file. This application was not filed until June 6, 2019, making it untimely and barred by laches.

"Laches is 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" *Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party." *Id.* Here, Petitioner failed to timely file any action that would prompt a timely request for the transcript and consideration of his claims. Applicant's attempt at reduction of his life sentence is not on claims his plea was coerced or some other failure of the judicial system but a simple request to reduce – not vacate – the sentence. (See Return Attachment 4). The failure to timely raise these claims is inexplicable, and critically, has worked to the prejudice and disadvantage of the State in its ability to defend against them.

Therefore, the application shall be summarily dismissed due to Applicant's failure to timely file and barred by laches.

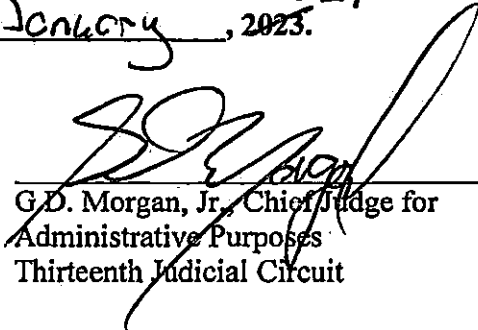
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application for post-conviction relief with prejudice unless Applicant provides specific factual or legal reasons that the application should not be dismissed for failure to timely file. Applicant is granted twenty days from the date of service of this order upon him to provide reasons that this order should not become final. Applicant shall file any reasons he may have with the Greenville

County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Melody J. Brown,
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 2nd day of January, 2024.


G.D. Morgan, Jr., Chief Judge for
Administrative Purposes
Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to

Attorney General and Applicant

on 1 / 3 / 2024.