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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

2019-CP-42-00905

Raekwon Wilson..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Raekwon Wilson appeals the Honorable J. Derham Cole's Order of Dismissal filed January 18, 2024.

This 31 day of January, 2024.


Susannah Ross, Attorney at Law
Bar #11205
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Andrew N. Cole, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Raekwon Wilson, SCDC No. 375336)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-00905

ORDER OF DISMISSAL

This matter comes before this Court by way of an application or post-conviction relief filed by Applicant Raekwon Wilson on March 11, 2019. Respondent made its return and moved to summarily dismiss the application on May 13, 2019, citing Applicant's failure to comply with the statute of limitations. Following a hearing on the motion to dismiss and a review of the record, pleadings, and evidence before it, this Court finds that this application is untimely and must be dismissed with prejudice pursuant to S.C. Code §17-27-45. Specific findings of fact and conclusions of law in accordance with S.C. Code Ann. §17-27-80 are set forth below:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for burglary, second degree, violent (2017-GS-42-00636), attempted murder (2017-GS-42-00637), armed robbery, and possession of a weapon during the commission of a violent crime (2017-GS-42-00638, Cts. I & II). Applicant was represented by Ricky Keith Harris, Esq., and Assistant Solicitor Spenser H. Smith, of the Seventh Circuit Solicitor's Office, prosecuted the case. On February 7, 2018, Applicant appeared before the Honorable Roger L. Couch and pled guilty, as indicted. Judge Couch then sentenced Applicant to concurrent terms of

fifteen years' imprisonment for burglary, twenty-five years' imprisonment for attempted murder,

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twenty-five years' imprisonment for armed robbery, and five years' imprisonment for the possession of a weapon during the commission of a violent crime. Applicant did not appeal his plea or sentence.

II. FACTUAL HISTORY

The following facts giving rise to Applicant's convictions were recited by the Assistant Solicitor at Applicant's plea hearing:

[T]his incident occurred on November 5th of 2016 at Holden's Ranch Restaurant on Southport Road in Spartanburg County around 9:20, something like that.

The evidence would be that Mr. Wilson and three other males—Rashad Thomas, William Meadows and Jonathan Norris and Jonathan Norris' girlfriend—were in a vehicle that they parked kind of beside the business.

Rashad Thomas, William Meadows and the defendant got out and went behind these two storage sheds that are behind Holden's Ranch where they geared up for the armed robbery that they had planned.

Mr. Wilson is a former employee of Holden's. He had been fired over a dispute about covering a shift or something like that several weeks prior to this.

Jonathan Norris was also a former employee of Holden's Ranch.

Evidence from codefendants would be that this was Mr. Wilson's plan, that he got Mr. Meadows to come into it. Mr. Wilson was a person that had the pistol. It actually ended up being a revolver that was stolen from Holden's Ranch by an employee that kept a weapon at the restaurant.

Mr. Wilson put kind of a hoody over his face that obscured the lower half of his face but not the top half. He and Mr. Meadows come in through the employee entrance. Basically, waited in the back until all customers were gone and they knew it was only the guys in the kitchen.

They enter in through the back, Mr. Wilson with the gun out. Mr. Meadows didn't have a gun. He kind of didn't have his face obscured at all.

They began demanding money, screaming demanding money saying, you know, this is no joke, this is no joke.

There's Andrew Garcia who is the manager. I guess he was the one that they thought had the money. Mr. Wilson is asking him for money.

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I believe what happened is Mr. Andrew was—immediately recognized it as Raekwon through his voice and through seeing him. And I guess he didn't take it seriously. He began to chuckle, I guess, is what one of the other codefendants says.

That that point Mr. Wilson turns the gun on Ryan Cockrill and shoots him from about 2 feet away in the chest or abdomen area. That bullet goes through him and back into a freezer behind him.

At that point Andrew grabs a blue bag of money and throws it at Raekwon, and they all run out. That third individual stayed in the back of the restaurant. One of the employees tried to get out. He was pushed back in. He didn't have a gun either.

They then piled back into the car, drive back to Highland and are dumped out.

Obviously, Ryan, the guy that got shot, he is present here in the court today, Your Honor. He also immediately recognized it to be Raekwon Wilson. He actually knew where he lived because he had picked him up and dropped him off to come to work. He's—while he's in the ambulance he's able to describe to investigators exactly which house he lives in.

They go there. Raekwon is not there. So there's immediately warrants sought for Mr. Wilson.

They pick him up about three days after this. He initially gives a story that he was not involved in it, and he does eventually come off of that story and writes about a 3-page confession that he did plan it out, that he was low on money because his girlfriend was pregnant. She was working at the time and he wasn't working, and this was his plan and felt the only option he had to provide for his family.

He does admit that he—he shot Ryan. He actually takes investigators to the blue bag that he had thrown in the woods. He tells them he had taken the gun and sold it and that he had eaten the shell casings and disposed of that the morning before they picked him up, I believe, in the bathroom.

III. CURRENT APPLICATION

Applicant filed his subject application for post-conviction relief on March 11, 2019, alleging that he was being held in custody unlawfully for the following reasons:

1. Applicant was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights during his guilty plea.
 - a. [Counsel] did not ensure that the Court explained the nature of the offenses and the elements of the offenses the State had to prove

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beyond a reasonable doubt before Applicant pled guilty to the four offenses.

- b. In the instant matter, the Court explained the minimum and maximum penalties for the offense, and the Court ensured that the Applicant had not been promised anything to get him to plead guilty. But the Court did not explain the nature of the offenses, the elements for the offense, and the Court did not ensure that *coercion*, intimidation, or *other forms of harassment* were not used to obtain the guilty plea. Therefore, the Applicant was not fully aware of the consequences of the plea.

Respondent made its return and moved to summarily dismiss the application on May 13, 2019, citing Applicant's failure to comply with the statute of limitations pursuant to §17-27-45.

Pursuant to this request, a conditional order of dismissal was issued by this Court on May 17, 2019. This conditional order provisionally dismissed the application, but afforded Applicant twenty days from service of the order to provide sufficient reasons as to why this order should not become final. Applicant was served with the order on June 13, 2019, and he responded on July 17, 2019, requesting equitable tolling of the statute of limitations. In his motion, Applicant stated that the "package containing the four copies of the PCR petition and memorandum was received by staff in the mailroom at Lee Correctional Facility on or about February 4, 2019, but the package was held for several weeks and then given to the Applicant." Applicant also stated that he "mailed the motions to the Court of Common Plea, Spartanburg County, on or about March 4, 2019."

After reviewing this response to the Conditional Order of Dismissal, the Court appointed counsel to represent Applicant and set the matter for a hearing on the State's motion to dismiss and to determine if Applicant was entitled to equitable tolling of the statute of limitations pursuant to *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718, (2017)

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The hearing was held on February 19, 2021, before this Court on the Cisco WebEx platform.¹ Applicant was represented by Susannah Ross, Esq., and Assistant Attorney General William H. Ray represented Respondent. Before the Court were the Spartanburg County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current PCR action.

Applicant testified at the hearing that a family member had retained the services of a paralegal, Robert E. Sweeney, to prepare his PCR application. Applicant presented two letters from the Sweeney, one dated February 11, 2019, and another dated June 7, 2019. The February 11 letter stated that Sweeney had mailed Applicant three copies of a completed PCR application, with instructions on how it should be filed. The June 7 letter stated that Sweeney had mailed Applicant three copies of a motion to toll the statute of limitations. Applicant's stated reason for the delay in filing the application was the paralegal's failure to timely provide him with the completed copies.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and records submitted by the parties, evidence presented at the hearing, and the applicable law. Pursuant to this review, this Court dismisses this application as untimely pursuant to § 17-27-45 (A), S.C. Code Ann. (1976).

"An application for post-conviction relief must be filed within one year after the entry of a judgment of conviction. . . ." S.C. Code Ann. §17-27-45(A). 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). "Mailing does not constitute filing. When

¹ See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.")

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a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008) (citations omitted).

“The statute of limitations shall be equitably tolled where ‘circumstances preventing a petitioner from making a timely filing are both beyond the petitioner’s control and unavoidable despite due diligence.’” *Mose v. State*, 420 S.C. 500, 508, 803 S.E.2d 718, 722 (2017). “In sum, if the circumstances warrant, the statute of limitations shall be tolled from receipt of the document by the prison until formally filed with the clerk’s office, provided that the applicant can verify by competent evidence the date prison authorities received the document for mailing.” *Id.* 420 S.C. at 511, 803 S.E.2d at 723.

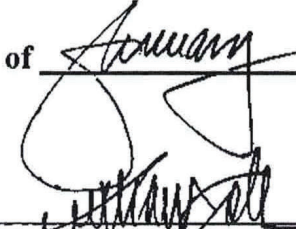
Applicant was convicted on February 7, 2018, and did not file an appeal. Therefore, the application was due for filing no later than February 8, 2019. Applicant testified that he received his completed application from the paralegal on February 11, 2019, before presenting it to the prison mailroom. Therefore, it is apparent from the records, pleadings, and evidence before this Court that the application was not submitted to the prison mailroom until after the expiration of the one year statute of limitations. As such, this Court finds that the application was not timely filed. Applicant has failed to substantiate with reasonably verifiable evidence that the application was delivered to prison authorities prior to the expiration of the statute of limitations, therefore, the “prison mailbox rule” is inapplicable to this case. Applicant has also failed to show that the untimely filing was due to circumstances beyond his control and was unavoidable despite his acting with due diligence. Equitable tolling of the statute of limitations is not justified under the circumstances of this case. Applicant’s motion to toll the statute of limitations is therefore denied, and Respondent’s motion to summarily dismiss the application with prejudice is **GRANTED**.

GRANTED

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the PCR application is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a notice of appeal within thirty days of the service of this order to secure appellate review. *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 18 day of August, 2024



J. Derham Cole
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina

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