

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Mark M. Lewis,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-33-00074

) **CONDITIONAL ORDER OF DISMISSAL**

2024-03-09 11:11:03

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Mark M. Lewis (Applicant) on February 10, 2023. Respondent, the State of South Carolina, made its Return¹ and Motion to Dismiss on January 16, 2023. After a review of the record and pleadings, this Court agrees this application should be summarily dismissed as untimely, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act,² and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is not presently confined in the South Carolina Department of Corrections.

¹ Respondent's return to the application was due to be filed within sixty 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.") Now, 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 accepts these returns 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.).

² S.C. Code Ann. § 17-27-10 *et seq.* (2014).

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According to Horry County records, Applicant is currently detained at the J. Reuben Long Detention Center with inmate number HC09272326464. During the November 2000 term, the Marion County Grand Jury indicted Applicant for Distribution of Crack Cocaine and Distribution of Crack Cocaine Within Proximity of School (2000-GS-33-385). Applicant was represented by William Derrick, Esquire.³

On February 28, 2001, Applicant appeared before the Honorable L. Casey Manning and pleaded guilty to the Distribution of Crack, and the Distribution Within Proximity of a School was dismissed. Judge Manning sentenced Applicant to fifteen years suspended upon the service of three months and five years' probation.

Applicant did not appeal his convictions or sentences.

On March 7, 2006, a probation arrest warrant (W-34-06-0012) was issued for Applicant for violating the condition of probation number two⁴. On April 13, 2006, Probation Agent Michelle C. Barnhill amended Applicant's probation citation to add violations of probation conditions numbers eight⁵ and ten⁶. On May 22, 2006, Applicant appeared before the Honorable

³ Due to the age of the proceedings, the transcripts of any of Applicant's proceedings are not available. Respondent cannot determine who represented Applicant during his probation revocation proceedings. Mr. Derrick only represented Applicant for his plea and sentencing.

⁴ 2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time. <https://www.dppps.sc.gov/index.php/Offender-Supervision/Standard-Conditions-of-Probation>

⁵ 8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court or by a warrant. <https://www.dppps.sc.gov/index.php/Offender-Supervision/Standard-Conditions-of-Probation>

⁶ 10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents. <https://www.dppps.sc.gov/index.php/Offender-Supervision/Standard-Conditions-of-Probation>

Paul Burch. Judge Burch revoked Applicant's probation and sentenced him to serve three years' imprisonment.

CURRENT ACTION BEFORE THIS COURT

On February 10, 2023, Applicant *untimely* filed his application for PCR in which he alleges the following:

- 10(a). "Erroneous calculation of jail credit & GCT credits."
- 10(b). "Sentence illegally enlarged probation beyond 5 years."
- 10(c). "Counsel failed to require the correct sentence calculation."
- 11(a). "SCDC failed to properly calculate jail credits."
- 11(b). "SCDC failed to calculate good conduct time credit."
- 11(c). "SCDC erroneously calculated term of probation."⁷

On April 2, 2023, Applicant filed another application for PCR that was nearly identical to the one filed in February.

In Applicant's first PCR application, he seeks relief in the form of "to obtain application of jail credits and GCT credits from 6-22-2000 to 2-28-01."

In Applicant's second PCR application, which Respondent construes as amendments to his first PCR application, Applicant seeks relief in the form of "to have 5-22-2006 violation expunged as invalid/illegal enlargement of probationary period/Ineffective assistance of counsel."

Respondent made its Return and Motion to Dismiss the current PCR action as untimely, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act. Respondent further moved to summarily dismiss this action pursuant to Rule 12(b)(6), SCRPC. This Court has before it the Marion County Clerk of Court records regarding the subject's convictions; Applicant's records from the South Carolina Department of Corrections;

⁷ Applicant's memorandum that was attached to his application is before this Court for review.

Applicant's guilty plea transcript; Applicant's records from his first PCR action; and the records of the current PCR action.

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. 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 that 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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moves to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.⁸ 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

⁸ S.C. Code Ann. § 17-27-10 to -160.

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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 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 allegations that his jail time credits and good conduct credits were erroneously calculated, and his probation term was illegally extended. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty and was sentenced on February 28, 2001. Applicant was on active probation that was revoked on May 22, 2006. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before May 23, 2007. Applicant did not file this PCR application until

February 10, 2023, *fifteen years, eight months, and eighteen days* beyond the statute of limitations.

Accordingly, this Court finds the application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and shall be summarily dismissed as barred by the statute of limitations.

SUMMARY DISMISSAL FOR FAILURE TO RAISE A COGNIZABLE CLAIM

In his application, Applicant raises claims about the manner and method in which SCDC and the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) calculated his jail credits and good conduct credits. While he raises these claims under the guise of ineffective assistance of counsel for failing to ensure SCDC and SCDPPPS correctly calculated his sentence, it is clear these claims are attacks on the manner and method in which SCDC and SCDPPPS have calculated his jail credits and good conduct credits.

This Court finds that these claims should be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act because sentencing calculation claims, credit-related claims, or challenges to other conditions of confinement within SCDC are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to

collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Post-conviction relief "is a proper avenue of relief *only when Applicant mounts a collateral attack challenging the validity of his conviction or sentence.* Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742,749 (2000) (emphasis added). A credit-related claim or challenge to other conditions of confinement is an administrative matter and, thus, cannot be raised in a post-conviction relief proceeding. Id.

These administrative matters typically arise in two ways: (1) when an inmate is disciplined, and punishment is imposed, and (2) when an inmate believes prison officials have erroneous Claims that affect only the duration of the sentence or the quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000). Such non-collateral or administrative matters must be reviewed through the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 378–79, 527 S.E.2d at 754–55.

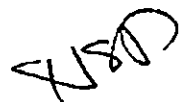
Here, Applicant avers that SCDC and SCDPPPS failed to properly interpret his sentence and failed to properly award him credits to which he is entitled. While Applicant's enumerated claims read as PCR claims because he frames them as ineffective assistance of counsel, the crux of his claims exclusively pertains to how SCDC and SCDPPPS has interpreted his sentence and awarded him credits, which clearly falls outside the purview of the post-conviction relief process. Accordingly, these claims must be adjudicated through the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. at 375, 547 S.E.2d at 753.

Accordingly, this Court shall dismiss these allegations pursuant to Rule 12(b)(6), SCRPC, for failure to state a cognizable claim and pursuant to § 17-27-70 because there is no genuine issue

of material fact which would necessitate an evidentiary hearing, and these allegations should be dismissed as a matter of law. See Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not hold a hearing in this matter, and, instead, summarily dismiss these claims. 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).

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|CONCLUSION PAGE FOLLOWS|




CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant's Counsel provides specific factual or legal reasons 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's Counsel shall file any reasons he may have with the Marion County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Post-Conviction Relief Division – 12th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Marion 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 27 day of February, 2024.



THE HONORABLE H. STEVEN DEBERRY, IV
Chief Administrative Judge,
Twelfth Judicial Circuit

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