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STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

2013 MAY 21) A 9:41

THE COURT OF COMMON PLEAS)
EIGHTH JUDICIAL CIRCUIT)

Russell Leon David, Sr., #240689)

2013-CP-30-0243)

Applicant.)

LAURENS COUNTY)
CLERK OF COURT)

v.)

CONDITIONAL ORDER OF DISMISSAL)

State of South Carolina.)

Respondent.)
_____)

This matter comes before this Court by way of an application for post-conviction relief filed March 22, 2013. The Respondent made its Return and Motion to Dismiss on

May 6, 2013.

PROCEDURAL HISTORY

In its Return, the Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted by the February 1997 term of the Laurens County Grand Jury for Conspiracy, Lynching, Strong Armed Robbery, Kidnapping, Grand Larceny of a motor vehicle, and Murder (1997-GS-30-0183). He was represented by Chip Howe, Esquire. On March 26, 1997, the Applicant pled guilty to all charges. The Honorable Costa M. Pleicones sentenced the Applicant to confinement for life for Murder, five (5) years, consecutive to Murder, for Conspiracy, ten (10) years, consecutive to Murder, for Lynching, 2nd degree, ten (10) years, consecutive to Murder, for Strong Arm Robbery, thirty (30) years.

SEL

consecutive to Murder, for Kidnapping, and ten (10) years, consecutive to Murder, for Grand Larceny of a motor vehicle. The Applicant did not appeal his conviction or sentence.

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant was denied right to"
 - a. "Applicant guilty and innocence phase"
 - b. "Applicant was not rendered assistance"
 - c. "Applicant(sic) counsel was ineffective"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that this Application for Post-Conviction Relief 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. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement 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.

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). The Applicant was convicted of the offense(s) he challenges in this Application on March 26, 1997. The Applicant was therefore required to file his application before March 27, 1998. This Application was filed on March 22, 2013 which is more than fifteen (15) years beyond the time that the statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

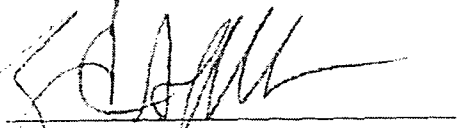
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(1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The 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. The Applicant shall file any reasons he may have with the Laurens County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 9th day of May, 2013.



EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina

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Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

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