

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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May 16 2024

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Walton J. McLeod, IV, Circuit Court Judge

LOWER COURT CASE NO.: 2022-CP-08-02904

Natalia Chisolm #368859

Petitioner,

v.

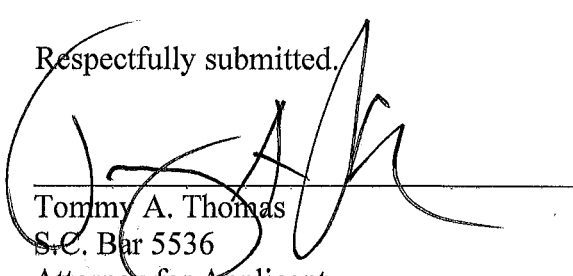
State of South Carolina,

Respondent,

NOTICE OF APPEAL

The Petitioner, Natalia Chisolm #368859, appeals the Order of Dismissal signed by the Honorable Walton J. McLeod, IV on April 8, 2024 and filed on April 26, 2024. Appellant received written notice of entry of this order on April 29, 2024.

Respectfully submitted.


Tommy A. Thomas
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May 16, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Natalia Chisolm, #368859

Applicant,

v.

State of South Carolina,

Respondent.

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

Case No. ~~2022-CP-08-02904~~ 2020 02094

ORDER OF DISMISSAL

CLERK OF COURT
BERKELEY COUNTY, SC

2024 APR 26 AM 9:51

FILED

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed by Natalia Chisolm ("Applicant") on September 22, 2020. Thereafter, Respondent made its return and moved to dismiss this action as untimely. Applicant filed a response asserting the statute of limitations should be equitably tolled. On March 12, 2024, a hearing on Respondent's Motion to Dismiss convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Tommy Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified at the hearing, and this Court heard argument from counsel. After reviewing the evidence and argument presented at the hearing and the records in this action, this Court grants Respondent's motion to dismiss, and dismisses this PCR action with prejudice.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections serving an active twenty-year sentence. In June 2015, the Berkely County Grand Jury indicted Applicant for two counts of contributing to the delinquency of a minor (2015-GS-08-01048, -01057); burglary in the second degree (2015-GS-08-01049); unlawful carrying of a pistol (2015-GS-08-01050); burglary in the first degree (2015-GS-08-01051); three counts of armed robbery (2015-GS-08-01052, -01053, -01054); three counts of kidnapping (2015-GS-08-01055,

EMAIL: T. THOMAS, D. DIXON 04/26/2024 JLE

-01056, -1059); and possession of a weapon during the commission of a violent crime (2015-GS-08-01058). These charges arose from a home invasion on October 21, 2014.

On June 30, 2016, Applicant pled guilty before the Honorable J. Mark Hayes to burglary in the first degree (2015-GS-08-01051), one count of armed robbery (2015-GS-08-01054), and one count of kidnapping (2015-GS-08-01055). Melisa Gay, Esquire, represented Applicant, and Elizabeth Sigal, Esquire, represented the State. The State did not indicate a sentencing recommendation and *nolle prossed* the remaining charges. Judge Hayes sentenced Applicant concurrently to 20 years for each charge.

On July 11, 2016, Melisa Gay, Esquire, filed a notice of appeal on Applicant's behalf, which was dismissed for failure to provide an explanation for appealing a guilty plea. The remittitur was sent December 30, 2016.

CURRENT APPLICATION

On September 22, 2020, Applicant commenced this untimely PCR action. Although she did not raise any specific allegations in her application, she filed a memorandum in support of an evidentiary hearing, asserting the statute of limitations should be equitably tolled. Before this Court are the Berkeley County Clerk of Court records of the subject conviction, Applicant's records from the South Carolina Department of Corrections, and Applicant's plea transcript.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds this action should be dismissed for failure to comply with the statute of limitations. "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...." S.C. Code Ann. § 17-27-45(A). The statute of limitations applies 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 statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). The circuit court may “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” § 17-27-70(c).

Here, Applicant pled guilty and was sentenced on June 30, 2016. Applicant filed a timely notice of appeal, which was denied. The remittitur was sent December 30, 2016. This PCR application was filed September 22, 2020—almost four years after the filing period expired. Accordingly, this action should be summarily dismissed as untimely.

This Court further finds the statute of limitations should not be equitably tolled. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008).

“[T]he unique conditions of incarceration require a holding that the statute of limitations should be tolled if the circumstances warrant.” *Mose v. State*, 420 S.C. 500, 510, 803 S.E.2d 718, 722 (2017). Equitable tolling should be used sparingly and “only when the interests of justice compel its use.” *Id.* at 511, 803 S.E.2d at 723. In the context of PCR applications, appellate courts have held the statute of limitations may be equitably tolled when document processing by prison authorities delays a PCR applicant's application. *Id.* at 508, 803 S.E.2d at 722. Likewise, the statute of limitations may be equitably tolled when an applicant fails to timely file the application

due to mental incompetence. *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009). However, “[i]gnorance of the statute of limitations is not an excuse for late filing” *Leamon v. State*, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). Likewise, the statute of limitations should not be equitably tolled when the PCR applicant fails to file his application in the correct court. *Pelzer*, 378 S.C. at 522, 662 S.E.2d at 621

At the PCR hearing, Applicant testified she planned to file a PCR application but was waiting for her appeal to become final. She testified her attorney never contacted her about the status of her appeal, and she did not learn it had been dismissed until 2018. On cross-examination, she clarified she learned her appeal had been dismissed when the Court of Appeals sent her a letter in 2018.

This Court finds Applicant did not set forth a sufficient basis to toll the statute of limitations. Even if the statute was tolled until the time Applicant learned her direct appeal had been dismissed, Applicant acknowledged she learned about the dismissal of that appeal when the Court of Appeals notified her of its dismissal in its June 1, 2018 letter.¹ Notwithstanding this, Applicant waited until September 20, 2020, to file the current application. To the extent Applicant claims she did not file the application sooner because she believed the statute of limitations had expired, this Court finds that is not a valid basis for setting aside the statute of limitations. *See Leamon*, 363 S.C. at 435, 611 S.E.2d 496 (“Ignorance of the statute of limitations is not an excuse for late filing”). Ultimately, Applicant has not established that (1) extraordinary circumstances prevented her from filing despite due diligence, (2) she actively pursued judicial remedies by filing a defective pleading during the statutory period or was induced or tricked by Respondent’s misconduct into allowing the filing deadline to pass, or (3) despite all due diligence, she was unable

¹ Applicant entered this letter into evidence at the hearing on the State’s motion to dismiss.

to obtain vital information bearing on the existence of her claim. Pelzer, 378 S.C. at 521, 662 S.E.2d at 619-20; Applicant has not set forth a sufficient basis for the statute of limitations to be equitably tolled; thus, Respondent's Motion is granted, and this PCR application is dismissed with prejudice.

CONCLUSION

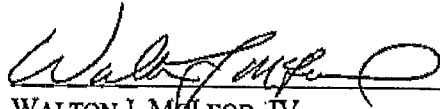
Based on the foregoing, this Court finds Applicant has not established a valid basis to toll the statute of limitations. Thus, Respondent's Motion to Dismiss is granted, and this application is dismissed with prejudice.

Should Applicant wish to secure appellate review, she must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

IT IS SO ORDERED.


WALTON J. McLEOD, IV
Presiding Judge
Ninth Judicial Circuit

THIS 5TH day of APRIL, 2024
Lexington, South Carolina