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SOL

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
 )  
Daeshaun Forrest, SCDC # 346850, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-5001

**CONDITIONAL ORDER OF DISMISSAL**

2021 DEC -6 PM 35  
JULIE J. ARISTON  
CLERK OF COURT

FILED

This matter is before the Court by way of an application for Post-Conviction Relief (PCR) filed by Daeshaun Forrest (Applicant) on November 13, 2020:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030); possession of a weapon during the commission of a violent crime (2015-GS-10-06031); discharging firearms into a dwelling (2015-GS-10-06032). Applicant was represented by Melissa Gay, Esquire. Assistant Solicitor Edward Regin "Ted" Corvey, III of the Ninth Circuit Solicitor's Office prosecuted the case.

On October 13, 2017, Applicant appeared before the Honorable Donald B. Hocker, where he pled guilty as indicted. On October 18, 2017, Judge Dennis sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, ten years for discharging firearms into a dwelling and thirty years upon the service of eighteen years, to be served concurrently.

### *Direct Appeal*

On October 24, 2017, a notice of direct appeal was filed on Applicant's behalf. On December 19, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal because he failed to provide a sufficient guilty plea explanation. Applicant then filed a motion to reinstate appeal on December 21, 2017. The South Carolina Court of Appeals denied the motion to reinstate, stating that there was no material fact or principle of law either overlooked or disregarded, so there is no basis for reinstating. The Remittitur was sent May 18, 2018.

For purposes of the Conditional Order of Dismissal, the Court incorporates the Charleston County Clerk of Court records regarding Applicant's conviction, Applicant's SCDC records, the and records of this PCR action.

### **II. 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 and all relevant supporting documents. Pursuant to South Carolina Code Sections 17-27-70 and -80, this court informs the parties of its intent to dismiss no genuine issue of material fact which 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). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

#### ***Statute of Limitations***

This Court finds 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 (2014). 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 on 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 proceedings a substantive standard not previously recognized or a right not in existence at the time of 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 application contends that there is evidence of material facts not previously presented and heard that required 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.

Id. §§ 17-27-45(A)-(C).

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 statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, subsection 17-27-70(c) of the South Carolina Code 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 that equitable tolling should apply to his PCR application due to ‘excusable neglect,’ stating that Applicant’s counsel failed to file a timely PCR application. However, this Court finds that no inexcusable neglect occurred, thus the application for PCR shall be denied.



Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). *Moates* explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

*Id.* Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. 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). *Pelzer* explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. “It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.” *Id.* However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. *Id.*



*Pelzer* explained the doctrine should be limited to very exclusive circumstances. “[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 620. *Pelzer* cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as “particularly illuminating:”

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loosen the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

*Pelzer*, at 378 S.C. 522-23, 662 S.E.2d at 621 (citing *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling)).

In *Pelzer*, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired, but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. *Id.* at 518-19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which *Pelzer's* application missed the statute of limitations



[could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” *Id.* at 522, 662 S.E.2d at 621.

This Court has also chosen not to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations). *Leamon* explained the applicant had a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496.

This Court has held that the statute of limitations should be equitably tolled for the filing of a post-conviction relief application in limited circumstances. *See Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency, and the applicant should proceed with his PCR action only if the application was filed within one year of the applicant regaining competency); *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant’s control, the application was not filed until three days past the deadline). Equitable tolling has also been allowed where “extraordinary circumstances prevented the plaintiff from filing despite his or her diligence” and where “the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.” *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 621.

In the present case, Applicant has presented no extraordinary circumstances present to warrant tolling of the statute of limitations. As the *Leamon* Court similarly found, Applicant had



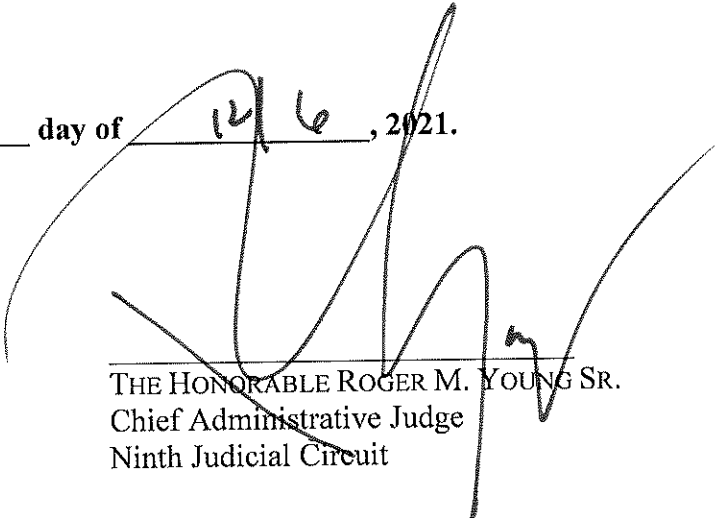
a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496. Therefore, Applicant's application for post-conviction relief fails to comply with the statute of limitations and shall be summarily dismissed.

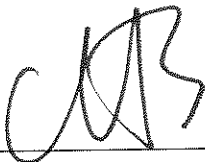
**III. CONCLUSION**

Pursuant to subsection 17-27-70(b) of the South Carolina Code (2014), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Lauren Mims, Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this \_\_\_\_\_ day of 12/6, 2021.

  
\_\_\_\_\_  
THE HONORABLE ROGER M. YOUNG SR.  
Chief Administrative Judge  
Ninth Judicial Circuit

  
\_\_\_\_\_, South Carolina.



ALAN WILSON  
ATTORNEY GENERAL

October 27, 2021

The Honorable Roger M. Young, Sr.  
Chief Administrative Judge  
100 Broad Street, Suite 368  
Charleston, SC 29401

**Re: Daeshaun Forrest, #346850 v. State of South Carolina**  
**2020-CP-10-5001**

Dear Judge Young:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Charleston County Clerk of Court for filing.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lauren T. Mims  
Assistant Attorney General

LTM/vh  
Enclosure(s)

cc: Tommy A. Thomas, Esquire