

May 30 2024

SC Court of Appeals

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STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Ricky Lamont Hayes, #306531, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-2143

**ORDER OF DISMISSAL**

2024 APR 25 AM 11:00  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Ricky Lamont Hayes (Applicant) on April 25, 2019. Respondent made its return and moved to dismiss the application as untimely.<sup>1</sup> On March 12, 2024, a hearing on the State’s Motion to Dismiss convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant asserted the statute of limitations should be equitably tolled and testified on his behalf. After reviewing the evidence and argument at the hearing and the records in this case, this Court grants Respondent’s motion to dismiss, and dismisses this PCR action with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In September 2013, the Charleston County Grand Jury indicated Applicant for two counts of armed robbery (2013-GS-10-4527). On January 12-15, 2015, Applicant proceeded to a jury trial before the Honorable Roger M. Young, Sr. Richard Buchanan and Edward Hawkins, Esquires, represented Applicant, and Assistant Solicitors Alexander Ziegler and Andrew Evans prosecuted the case. The jury convicted Applicant as indicted, and Judge Young sentenced

<sup>1</sup> On February 23, 2024, Respondent filed an Amended Return and Motion to Dismiss.

him to concurrent terms of thirty and fifteen years.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Lara M. Caudy. On appeal, Applicant argued the trial court erred in refusing to suppress his custodial statements. The Court of Appeals affirmed on the merits. The Court further found that even if the admission of the statements was error, any error was harmless beyond a reasonable doubt due to overwhelming evidence of Applicant's guilt. *State v. Hayes*, 2017-UP-149 (Ct. App. filed April 5, 2017). The remittitur was sent April 21, 2017.

On March 22, 2018, Applicant filed a *pro se* Notice of Appeal from these convictions in the Supreme Court of South Carolina (2018-000542). The Supreme Court dismissed the appeal, finding the Appellate Court Rules do not allow for the filing of successive appeals from a criminal conviction. The remittitur was sent April 18, 2018.

#### **CURRENT APPLICATION**

On April 24, 2019, Applicant filed the current PCR application. Applicant did not set forth the basis of his claim. As relief, Applicant sought to "vacate all criminal charges with prejudice, reverse & remanded, or new trial." Respondent filed a return and motion to dismiss, and on July 17, 2020, the Honorable Jennifer B. McCoy issued a conditional order of dismissal. Thereafter, Applicant filed a response requesting appointment of counsel and asserting his application was timely. On January 12, 2024, Christopher L. Murphy was appointed to represent Applicant.<sup>2</sup> Before this Court are the Charleston County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records, including the records of his 2018 appeal in the Supreme Court.

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<sup>2</sup> James Falk, Esquire, previously represented Applicant.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds this action should be dismissed for failure to comply with the statute of limitations. Pursuant to S.C. Code Ann. § 17-27-45(A), a PCR application “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.” 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. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994)

Here, Applicant was sentenced on January 15, 2015, and the remittitur from his direct appeal was sent April 21, 2017. Thus, this application was due on April 22, 2018. This application was filed April 25, 2019—more than a year after the statute of limitations expired. Thus, this application 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 hearing, Applicant testified he filed a *pro se* appeal, which was remitted April 21, 2017. He stated he spoke with counsel about filing a motion for rehearing and was told he could file a petition for a writ of habeas corpus. Applicant stated he was also told he could only file one appeal at a time, and he filed a motion with the Supreme Court a year after the remittitur from his first appeal was sent, but it took the Supreme Court a year to respond. He also testified he mailed the PCR application, but it was sent back three weeks later.

This Court finds Applicant did not set forth a sufficient basis to toll the statute of limitations. Based on the records before this Court, Applicant’s direct appeal was remitted April 21, 2017. Thereafter, Applicant filed an improper, successive appeal in the Supreme Court of South Carolina on March 22, 2018—nearly a year after his direct appeal was remitted. The Supreme Court dismissed the appeal, finding the Appellate Court Rules do not allow for the filing of successive appeals from a criminal conviction. The remittitur was sent April 18, 2018. This Court finds the improperly filed successive appeal did not toll the time for filing this PCR application. Even if it did, this application was not filed until April 25, 2019—more than one year

after the remittitur from the second appeal (April 18, 2018), making it untimely and barred by the statute of limitations.

This Court further finds Applicant's testimony did not establish that he mailed the application and it was returned three weeks later. Applicant signed the verification on the PCR application on April 12, 2019, and the application was filed April 25, 2019—less than two weeks after it was verified. Applicant did not offer testimony or evidence of any prior application he attempted to file that was returned to him. Ultimately, Applicant has not established that (1) extraordinary circumstances prevented him from filing despite due diligence, (2) he 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, he was unable 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 to Dismiss 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), SCRPC. 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.**



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WALTON J. MCLEOD, IV  
Presiding Judge  
Ninth Judicial Circuit

THIS 8<sup>TH</sup> day of APRIL, 2024  
Lexington, South Carolina