

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Rodney M. Davis, Jr., #357843,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-03374

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Rodney M. Davis, Jr. on September 23, 2019. Respondent made its Return, requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the December 2012 term, the Spartanburg County Grand Jury indicted Applicant for First Degree Criminal Sexual Conduct (2012-GS-42-5730), two counts of Kidnapping (2012-GS-42-5731 and -5736), First Degree Burglary (2012-GS-42-5732), Obtaining Signature or Property by False Pretenses, Less than \$2,000 (2012-GS-42-5733), Petit Larceny (2012-GS-42-5734), Carjacking (2012-GS-42-5735), and Pointing and Presenting a Firearm (2012-GS-42-5737). Clay T. Allen, Esquire represented Applicant. On November 14, 2013, Applicant pled guilty before the Honorable Robin Stillwell, circuit court judge. Judge Stillwell sentenced Applicant to a total of forty years imprisonment, sentences running concurrently.

Applicant made a timely Notice of Appeal on November 25, 2013, and an amended Notice of Appeal on November 27, 2013. The South Carolina Court of Appeals dismissed Applicant's appeal, by written order, for failure to provide a sufficient explanation, pursuant to

FILED
2022 NOV -2 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
RODNEY M. DAVIS, JR.

Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on February 26, 2014.

II. Current Action before this Court

In his PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Trial counsel was ineffective for failing to do a reasonable investigation to discover mitigating circumstance that possible could have reduced the applicant sentence."

On February 8, 2021, Applicant filed a document entitled "Amended Application for Post-Conviction Relief", in which he alleged:

1. Ineffective assistance of counsel:
 - a. "For failure to request and/or advise Applicant about additional examination by a designated examiner for Applicant's choice in order to render a more reliable result of Applicant's fitness to stand trial when Applicant's mental incompetency was crucial and important for the defense."
 - b. "For failing to request a hearing on the issue of Applicant's fitness to stand trial which is designed to protect accused's right to a fair trial by due process determination of his competency and fitness to stand trial as guaranteed by the United States Constitution, Amendment 14."
 - c. "For advising Applicant to plead guilty to a crime which he did not commit."
 - d. "For failing to do a reasonable investigation to discover mitigating circumstances for the defense that possibly could have changed the results of the proceedings."
 - e. "For engaging in conduct that is prejudicial to the administration of justice."
 - f. "For failing to object to newly submitted evidence during the plea hearing before the guilt phase."
 - g. "For failing to advise Applicant about how newly submitted evidence could [a]ffect the defense before guilt phase."
 - h. "For failing to present an argument regarding the language of statutes which needed to be construed in comparison with statements of aggravating circumstances."
 - i. "For failing to advise Applicant about the option to call an expert witness to testify about the validity of written confession when Applicant did not write it but signed it and Applicant's competence was an issue throughout the case."
 - j. "For failing to potential alibi witness."
 - k. "For failing to adequately prepare for trial."
 - l. "For failing to adequately advise Applicant on consequences of plea."

Applicant filed an additional response on February 9, 2021. In this response, he claims his application was filed late because of mental incompetency. Applicant claims the application

was filed within a year of regaining competency.

Before this Court are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the current PCR application, and prior direct appeal action records.

III. 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 Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application for untimeliness.

The Court finds that this application must 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. Specifically, the act requires as follows:

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.

S.C. Code Ann. § 17-27-45(A).

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. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, South Carolina Code Annotated Section 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."

Applicant pled guilty to all charges on November 14, 2013, and the remittitur was issued

on February 26, 2014. The application was therefore due on February 27, 2015. This application was filed on September 23, 2019, well beyond the statutory filing period. Applicant has failed to explain the over four-year delay in filing this application.

Applicant has failed to show why he is entitled to equitable tolling. Specifically, Applicant has failed to establish mental incompetence existed for the length of his delay. *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (holding the tolling of the PCR statute of limitations is warranted if an applicant can establish his mental incompetence preventing timely filing of his application). Though Applicant attached medical notes, much of it remains irrelevant to the issue of his mental health and what little exists concerning his mental health reflects that his symptoms are well-managed. Additionally, Applicant, by his own admission, was not deemed incompetent at the time of his plea and, once the plea was over, he began treatment. This would indicate that his situation improved after the plea and, accordingly, was did not downslide into incompetence. This is not sufficient to raise an issue of competence. Thus, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

RKK

FILED
2022 NOV -2 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
AMY M. COLE


IV. Conclusion


Pursuant to South Carolina Code Annotated Section 17-27-70(b), the 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 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 with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Chelsey F. Marto, Esquire
PCR Division – Seventh Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 2 day of November, 2022.


R. KEITH KELLY
Chief Administrative Judge
Seventh Judicial Circuit

, South Carolina

FILED
2022 NOV -2 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA