

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Fai'Quan Swindell, #384536,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-40-6647

) **CONDITIONAL ORDER OF DISMISSAL**

RICHLAND COUNTY  
FILED  
2024 MAY 10 AM 10:34  
JANETTE W. McGRIDE  
CLERK S.C. J.C.S. & F.C.

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Fai'Quan Daewoo-Shyhon Swindell (Applicant) on December 14, 2023. In response, Respondent made its return<sup>1</sup> and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismisses the action based on the following:

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC).

---

<sup>1</sup> Respondent's return to the application was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts these returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On April 19, 2018, the State Grand Jury indicted Applicant of Conspiracy, Murder, two counts of Attempted Murder, Discharging a Firearm Into a Dwelling, and Possession of a Weapon During the Commission of a Violent Crime (2018-GS-47-25, -28). Applicant was represented by Stephen C. Burn, Jr., Esquire. Assistant Attorney General Joshua Richard Underwood prosecuted the case.

On December 1, 2020, Applicant appeared before the Honorable William P. Keesley and pleaded guilty to the lesser included Voluntary Manslaughter and Possession of a Weapon During the Commission of a Violent Crime. All other charges were *nolle pross'd*. Judge Keesley sentenced Applicant to twenty-five (25) years for Voluntary Manslaughter and five (5) years for the weapons charge.

Applicant did not appeal his convictions or sentences.

#### CURRENT ACTION BEFORE THIS COURT

On December 14, 2023, Applicant *untimely* filed his application for PCR in which he alleges the following:

1. Invalid Plea Agreement
  - a. State made a recommendation on behalf of the victim's family and should have remained silent.
2. Ineffective Assistance of Counsel
  - a. Failure to object to the State making a recommendation on behalf of the victim's family.
  - b. Failure to file an appeal.<sup>2</sup>

Applicant seeks relief in the form of "new trial."

Before this Court is Respondent's Return and Motion to Dismiss; the State Grand Jury Clerk of Court records regarding the subject's convictions; Applicant's records from SCDC;

---

<sup>2</sup> Before this Court is a plea agreement where Applicant expressly waived his right to a direct appeal and waived his right to a post-conviction relief action outside of "claims that directly attack the effectiveness of advice to agree to the waiver." (Plea Agreement p. 5)

Applicant's guilty plea transcript; and the records of the current PCR action.

**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 §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is 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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

***SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS***

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.<sup>3</sup> 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 upon an 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 the state court trial,

---

<sup>3</sup> S.C. Code Ann. § 17-27-10 to -160.

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 applicant contends that there is evidence of material facts not previously presented and heard that requires 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.

S.C. Code Ann. § 17-27-45.

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 the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on an allegation of ineffective assistance of plea counsel. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty and was sentenced on December 1, 2020. Applicant did not pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before December 2, 2021. Applicant did not file this PCR application until December 14, 2023, *two years and twelve days* beyond the statute of limitations.

Accordingly, this Court finds this application is *untimely* pursuant to S.C. Code Ann. § 17-

  
Page 4 of 5

27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

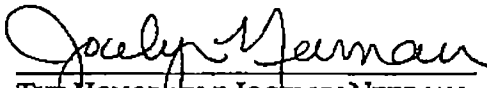
CONCLUSION

Pursuant to S.C. Code Ann. § 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
PCR Division – 5<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

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

AND IT IS SO ORDERED this 14<sup>th</sup> day of May, 2024.

  
THE HONORABLE JOCELYN NEWMAN  
Chief Administrative Judge  
Fifth Judicial Circuit

Columbia, South Carolina