

STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

William R. Smith, #161838,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2024-CP-34-00199

) **CONDITIONAL ORDER OF DISMISSAL**

This matter is before the Court based on an untimely application for post-conviction relief (PCR) filed by William R. Smith (Applicant) on June 13, 2024. In response, Respondent, the State of South Carolina, made its return and moved to summarily dismiss this application 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) pursuant to the orders of commitment of the Marlboro County Clerk of Court. During its October 1989 term, the Marlboro County Grand Jury indicted Applicant for Kidnapping (1989-GS-34-0559). Applicant proceeded pro se and Frank E. Cain, Jr., Esquire, remained on as standby counsel.

On November 16, 1989, Applicant proceeded to a jury trial before the Honorable Luke N. Brown, Circuit Court judge. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to life imprisonment.



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Applicant filed a timely Notice of Appeal. On December 13, 1989, Applicant filed a Motion to Withdraw his appeal. On March 7, 1990, Applicant's Motion to Withdraw was granted by Order.

**FIRST PCR ACTION: 1990-CP-34-00086**

On April 2, 1990, Applicant filed his first PCR action alleging the following issues:

1. Ineffective Assistance of Counsel:
  - a. Failed to move for a continuance.
  - b. Failed to request the court inquire as to the Applicant's competency.
  - c. Failed to move for a mistrial or advise the Applicant to move for a mistrial based on remarks in the solicitor's closing argument.
2. Violation of Sixth and Fourteenth Amendments:
  - a. Counsel was not appointed until three days before trial.
3. Violation of fourteenth Amendment:
  - a. The Applicant was not informed of the right to a preliminary hearing.

An evidentiary hearing was convened on September 6, 1990, at the Darlington County Courthouse. Delton Powers, Esquire, represented the Applicant. The Honorable C. Anthony Harris denied and dismissed the Applicant's application by order dated October 23, 1990.

Upon information and belief, the Applicant appealed the matter to the South Carolina Supreme Court, which denied the petition for writ of certiorari.<sup>1</sup>

**SECOND PCR ACTION: 1994-CP-34-00200**

On November 10, 1994, Applicant filed his second PCR action raising the following issues:

1. "Petition was legally incompetent at the time of the crime and trial; Petitioner's guilty verdict violated the confines of South Carolina law 'The hand of one is the hand of all.' Petitioner

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<sup>1</sup> The Respondent notes that, due to its age, this file has been destroyed. The second PCR matter, however, references an appeal from the denial of the first PCR application.

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Post Conviction Counsel was ineffective. The Evidence was Insufficient to convict."

An evidentiary hearing was convened on January 17, 1996, at the Darlington County Detention Center. Wade R. Crow, Esquire, represented the Applicant. The Honorable B. Hicks Harwell, Jr. denied and dismissed the Applicant's application by order dated March 1, 1996.

Applicant filed a timely notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson petition. The South Carolina Supreme Court denied the Applicant's petition for writ of certiorari on January 13, 1997.

**THIRD PCR ACTION: 2009-CP-34-00159**

On June 17, 2009, Applicant filed his third PCR action raising the following issues:

1. "I am unlawfully confined under a current Sentence that exceeded the amount of punishment under 16-3-910."
2. "The South Carolina Parole Board does not have subject matter jurisdiction to grant me Parole under 16-3-910 because the amount of punishment for kidnapping is 30 year in which I have exceeded."
3. "The current sentence is void because it has exceeded the amount of punishment under Article 9 kidnapping offense section 16-3-910 is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty year unless sentenced for Murder as provided in 16-3-20."

The State made its Return and Motion to dismiss. On November 5, 2009, the Honorable Paul M. Burch issued the Conditional Order of Dismissal. On January 29, 2010, Judge Burch filed the Final Order of Dismissal dismissing the action with prejudice.

**PAROLE AND SUBSEQUENT ARREST**

On February 11, 2016, Applicant was granted parole. On August 9, 2022, Applicant was arrested. During its September 2022 term, the Marlboro County Grand Jury indicted Applicant for Hit and Run (2022-GS-34-0550), Possession of a Controlled Substance (2022-GS-34-0530), Domestic Violence - 2<sup>nd</sup> Degree (2022-GS-34-0527), Unlawful Carry of a Pistol (2022-GS-34-

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0528), and Possession of a Firearm by Person Convicted of Violent Felony (2022-GS-34-0529).

On September 7, 2022, a Parole Arrest Warrant (W-35-22-0022) was issued on Applicant for violations of ordered conditions numbers 4, 6, 7, 9, and 10. On February 27, 2023, Applicant appeared before the South Carolina Board of Probation, Parole, and Pardon Services (the Board). The Board found Applicant had violated the conditions of his parole numbers 4, 6, 7, 9, and 10. The Board revoked Applicant's parole and remanded him into the custody of SCDC to serve out the remainder of his sentence.

**CURRENT ACTION BEFORE THIS COURT**

On June 13, 2024, Applicant filed his application for PCR in which he alleges the following:

1. "My parole was unlawfully revoked."
2. "My sentence has expired, kidnap law is 30 years. This 35 year old case."
3. "I am being unlawful held in State custody. All charge was false and been dismiss on 1-10-24."<sup>2</sup>
4. "I am innocent. All charge they use to revoked my parole has been dismiss against me on 1-10-24."
5. "35 year old case. Don't have no victim, witness, no weapon."
6. "And the law have changed from life to 30 years. Made parole after 27 years got false accuse on 7-30-22 and arrest on 8-9-22."

Applicant seeks relief in the form of "this court to grant me a reinstatement back on parole and order the Bennettsville City Police and SCDC to pay me back wage from my job for every day."

Before this Court is Respondent's Return and Motion to Dismiss, the Marlboro County Clerk of Court records regarding the subject's convictions and sentences, Applicant's parole records, and the records of the current PCR action.

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<sup>2</sup> While Applicant's 2022 charges were dismissed, they were dismissed with leave to be reindicted because his parole was revoked.

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**FINDING 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); Learnon 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 the 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 decision, and if the standard or right is intended to be

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



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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 multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was granted parole on February 11, 2016. Applicant's parole was revoked on February 7, 2023. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before February 8, 2024. Applicant did not file his application until June 13, 2024, *four months and five days* beyond the statute of limitations.

Accordingly, this Court finds this application is untimely pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

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***RESPONSE TO MOTION TO VACATE SENTENCE***

On June 13, 2024, Applicant filed a motion to vacate his sentence. Specifically, Applicant contends that the kidnapping statute has changed to a maximum sentence of thirty (30) years and this Court should vacate his sentence accordingly because his case is thirty-five (35) years old. Applicant further avers that his sentence exceeds the maximum allowed under the law. Applicant bases his assertion off the amended version of S.C. Code Ann. § 16-3-910. Applicant was convicted and sentenced in 1989. At that time, the maximum sentence for kidnapping was a life sentence. In 1991, the South Carolina legislature amended the kidnapping sentencing in 1991 Act No. 117, in which the maximum sentence for kidnapping was changed to thirty years. The amendment to the kidnapping statute was not retroactive and would not apply to Applicant's convictions or sentences. The governing law in Applicant's case is the law when the case was adjudicated.

Accordingly, this Court denies this motion as it fails as a matter of law.

***RESPONSE TO MOTION FOR DISCOVERY***

Respondent moved to summarily dismiss this motion pursuant to Rule 12(b)(6), SCRPC, as Applicant has not provided good cause for an order permitting discovery. This Court agrees and denies this motion.

|CONCLUSION PAGE FOLLOWS|



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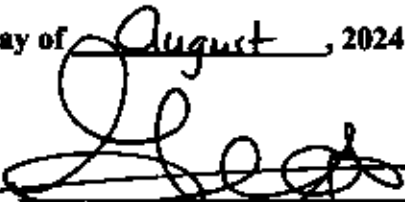
**CONCLUSION**

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 Marlboro County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
PCR Division – 4<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 Marlboro 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 21<sup>st</sup> day of August, 2024.

  
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GEORGE M. MCFADDIN, JR.  
Chief Administrative Judge  
Fourth Judicial Circuit

Sumter, South Carolina

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