

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Patrick C. Fant, Circuit Court Judge

2022-CP-23-2304

Stacy Murray , Appellant,

v.

The State, Respondent.

NOTICE OF APPEAL

Stacy Murray appeals the Honorable Patrick C. Fant's Order of Dismissal filed April 3, 2025.

This 10th day of April, 2025

s/ Susannah Ross
Susannah Ross, Attorney at Law
Bar # 11025
330 E. Coffee St.
Greenville, SC 29601
susannah@rossenderlin.com
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Kaylee Kemp, Assistant Attorney General
Tommy Evans, Jr., Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

proposed order.¹ This Court now **GRANTS** the State’s motion to dismiss the application for the specific reasons set out in this order.

PROCEDURAL HISTORY

Applicant is currently confined in the Trenton Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. A Greenville County grand jury indicted Applicant during a September 2018 term for Trafficking Methamphetamine (2018-GS-23-5197); Possession of Cocaine Base (2018-GS-23-5198); and Failure to Stop for Blue Light (2018-GS-23-0707). R. Asher Watson, Esq., represented Applicant on the charges.

On April 12, 2021, Applicant appeared before the Honorable Edward Miller and pled guilty as indicted. Judge Miller sentenced Applicant to 12 years for the trafficking charge, 3 years for the possession charge, and 3 years for failure to stop for blue light, with all charges to run concurrently, and credit for time served. Applicant did not file a direct appeal.

CURRENT PCR ACTION

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Sixth and Fourteenth Amendment of Constitution Prohibita Prior.”
2. “Ineffective counsel.”

Applicant is seeking to be re-sentenced to seven years imprisonment.

¹ The proposed order was provided to counsel for Applicant prior to this Court’s acceptance. Applicant’s counsel was also allowed sufficient time to review the proposed order while this Court made its own detailed review. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a “proposed order should be transmitted to opposing counsel” for review and that counsel “should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider Applicant's testimony presented at the PCR hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

ARGUMENTS PRESENTED

The State argues that the application should be dismissed as untimely pursuant to S.C. Code Ann. § 17-27-45(A). Applicant was sentenced on April 12, 2021. Applicant did not appeal. The application was, therefore, due to be filed on or before April 13, 2022. This application was not filed until May 3, 2022, after the statutory filing period had expired.

Applicant argues that the filing is timely in accordance with the "prison mailbox rule," referencing *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017), which found that an Applicant's application was entitled to equitable tolling when the Applicant placed his application in the hands of prison authorities prior to the expiration of the statute of limitations, but the application was not filed with the clerk of court until after the deadline had passed. Applicant argued that the notary signed his application on April 11, 2022, and prison authorities received the application on the same day. Applicant argues that any further delay was out of his control and that he should be entitled to equitable tolling considering he delivered his application to prison authorities prior to the expiration of the statute of limitations.

In response, the State argues that Applicant is not entitled to equitable tolling as he did not exercise due diligence in preserving his legal rights. The State argued that Applicant gave his application to prison authorities two days prior to the expiration of the filing deadline, which is an unreasonable time frame to expect the application to be processed and sent from prison authorities

and received, processed and filed by the Clerk of Court. The State argued that the late filing was of Applicant's own doing for failing to diligently file in accordance with the statute.

THE APPLICATION IS UNTIMELY

The Uniform Post-Conviction Procedure 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 offense 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).

There is no confusion as to the statutory deadline which the application is required to be filed by the Clerk of Court in this case. Applicant was sentenced on April 12, 2021, and did not appeal his conviction or sentence. The application was, therefore, due to be filed on or before April 13, 2022, however, Applicant's application was not filed with the Clerk of Court until May 3, 2022, after the statutory filing period had expired.

Mailing does not constitute filing of a PCR application for statute of limitations purposes. *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). Rather, the application is deemed "filed" when it is delivered to and received by the Clerk of Court. *Id.* However, there are circumstances which warrant equitable tolling of the statute of limitations, notably, where "circumstances preventing a petitioner from making a timely filing [are] both beyond the petitioner's control and unavoidable despite due diligence." *Ferguson v. State*, 382 S.C. 615, 618, 677 S.E.2d 600, 602 (2009) (quoting *Commonwealth v. Carneal*, 274 S.W.3d 420, 429 (Ky. 2008)) (holding that PCR applicant's failure to timely file due to mental incompetency warranted

equitable tolling of the statute of limitations); *cf. Pelzer*, 378 S.C. at 522, 662 S.E.2d at 621 (determining equitable tolling was not warranted where inmate missed filing deadline due to mailing application to wrong venue).

Applicant argues that he should be entitled to equitable tolling, considering prison authorities received his application on April 11, 2022, two days prior to the statutory deadline. He thereby contends that the delay in filing was beyond his control and should be considered an extraordinary circumstance. Thus, a fact specific determination is warranted to determine if the equitable tolling defense is justified. *Mose v. State*, 420 S.C. 500, 511, 803 S.E.2d 718, 723 (2017). *See Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). (“Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.”). *see, e.g., Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990) (“stating that while equitable tolling was allowed where claimant actively pursued remedies but filed defective pleading, or was induced by adversary into allowing deadline to pass, ‘[w]e have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.’”)

Of particular note, prison authorities received Applicant’s application two days prior to the filing deadline. Applicant had one year from the date of his conviction to file a PCR application and chose to submit the application two days prior to the deadline. Any delay in the regular course of processing is entirely avoidable had Applicant exercised due diligence in submitting his application. The narrow window by which Applicant’s filing passed the statutory deadline cannot be construed as so exceptional a circumstance as to warrant equitable tolling. “It is clear under South Carolina law that mailing does not constitute filing.” *Gary v. State*, 347 S.C. 627, 629, 557

S.E.2d 662, 663 (2001). “When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Id.*

“[T]olling the statute of limitations in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to no fault of his own ‘does not create an exception by which incarcerated litigants may avoid time restrictions.’” *Mose*, 420 S.C. at 510, 803 S.E.2d at 723 citing *Lewis v. Richmond City Police Dep’t*, 947 F.2d 733, 736 (4th Cir. 1991). “Instead, it provides PCR applicants with functionally equivalent time bars and seeks to ensure equal access to the courts for all. *Id.* citing *Lewis*, 947 F.2d at 736. *See Hooper*, 386 S.C. at 115, 687 S.E.2d at 29 (“Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” (internal quotation marks and citations omitted)). Thus, in review of the circumstances of each case, the determination must be aimed at protecting fundamental fairness without disregarding the statutory time restriction.

Applicant relies on the holding in *Mose*, in which Mose gave his application to prison authorities on February 18, 2014, and the application was not filed until March 10, 2014 – seventeen days later. Our Supreme Court held that Mose was prevented from timely filing due to circumstances beyond his control. The circumstances in *Mose* are comparable to Applicant’s, however, Applicant submitted his application to prison authorities *two* days before the statutory deadline, as opposed to Mose’s *seventeen*. Our Supreme Court has “expressly decline[d] to adopt a rule that automatically deems a PCR application ‘filed’ on the date an applicant claims it was delivered to prison authorities.” *Mose*, 420 S.C. at 510, 803 S.E.2d at 723-724. As such, this Court finds that Applicant has failed to show that his circumstances warrant a justifiable equitable tolling defense.

CONCLUSION

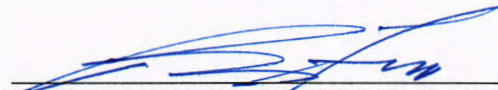
Based on all the foregoing, this Court finds and concludes that the State's Motion to Dismiss is **GRANTED** and this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Respondent's motion to dismiss is granted and Applicant's application is dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 3rd day of April, 2025.


THE HONORABLE PATRICK C. FANT
Presiding Judge

Greenville, South Carolina

Copy mailed to
Attorney general (KK) Susannah Rose
on 4 / 8 / 2025.