

Lonnie Geter #288401  
Perry Correctional Institution  
Q-3 B-201  
430 Oaklawn Road  
Pelzer, S.C., 29669

**RECEIVED**

OCT 10 2013

S.C. SUPREME COURT

Date October 5, 2013

C/A 2011-CP-42-2695

Dear, Honorable Daniel E. Shearouse:

Enclosed for filing in your office is a  
Original Copy of notice of Appeal, along with  
A Proof of Service.

I am Requesting a certify copy clocked stamped  
and dated.

C:C: L.G.  
C:C: S.C.S.C: D.E.S.  
C:C: A.G: S. H. W.

Respectfully submitted

S/ Lonnie Geter

Lonnie Geter #288401  
P.C.I. Q-3 B-201  
430 Oaklawn Road  
Pelzer, S.C. 29669

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

Roger L. Couch, Circuit COURT Judge

CASE # 2011-CP-42-2695

Lonnie Geter #288401  
Appellant.

VS

State of South Carolina  
Respondent.

---

NOTICE OF APPEAL

---

I Lonnie Geter #288401 Appeal the Denial and Dismissal of my Application for Post-Conviction Relief in the above case. The Decision was ordered by Roger L. Couch on August 30<sup>th</sup> 2013, and received at Perry Corr. INST. on September 11<sup>th</sup> 2013. Pro-se

Date October 5, 2013

S/ Lonnie Geter  
#288401  
P.C.F. Q-3 B-201  
430 Oaklawn Road  
Pelzer, S.C. 29669

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

ROGER L. COUCH, CIRCUIT COURT JUDGE

CASE NO# 2011-CP-42-2695

LONNIE GETER #288401  
APPELLANT

VS

STATE OF SOUTH CAROLINA  
RESPONDENT

---

Proof of Service

---

I Certify that I have server the notice of Appeal on the STATE of South Carolina by Placing A copy of the notice of Appeal in PERRY CORR. INST. mail Box address below.

(1) Attorney General office  
Suzanne H. white  
P.O. BOX 11549  
Columbia, S.C. 29211

(2) The supreme Court of  
South Carolina  
Daniel E. Shearouse  
Clerk of Court  
P.O. Box 11330  
Columbia S.C. 29211

S/ Lonnie Geter #288401  
P.C.J. B-3 B-201  
430 oaklawn Road  
Pelzer, S.C. 29669

BA

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Lonnie Geter # 288401, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-2695

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
 CLERK OF COURT  
 AUG 29 AM 10:34  
 M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed June 21, 2011<sup>1</sup>. Respondent made its Return and Motion to Dismiss on or about August 16, 2012.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County for unrelated charges. The Applicant attacks two separate convictions in this application. The Applicant was indicted at the August 1991 and May 1998 terms of the Court of General Sessions for Spartanburg County for two counts of burglary third (1991-GS-42-3059, 1998-GS-42-2304). Applicant was represented by Billy Hahs, Esquire, for the 1991 indictment and John Abdalla, Esquire, for the 1998 indictment. On July 12, 1993 the Applicant pled guilty to third degree burglary (91-3059). He was sentenced by the Honorable E.C. Burnett III to confinement for a period of five (5) years suspended upon the service of time served to eighteen (18) months probation for third degree burglary. On August 24, 1998, the Applicant pled nolo contendere to third degree burglary (98-2304). Pursuant to a negotiated plea, the Honorable Donald W. Beatty sentenced the Applicant to confinement for a

period of ten (10) years suspended upon the service of four (4) years to three (3) years probation. The Applicant did not appeal either guilty plea or sentence.

### Applicant's Current PCR Application

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; in that,
  - a. "My attorney failed to devote himself to my cause,"
  - b. "My attorney failed to give me his complete loyalty,"
  - c. "My attorney failed to serve my cause in good faith,"
  - d. "My attorney neglected the necessary investigation and preparation of my cause,"
  - e. "My attorney did not do the necessary factual investigation on my behalf."
2. Lack of subject matter jurisdiction because of a sham legal process,
3. Violation of 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment rights,
4. Perjury and Prosecutorial Misconduct, and
5. "Applicant contend[s] that his prior convictions and sentences were in violation of the Constitution of the U.S. and laws of this State."
6. Newly discovered evidence of unconstitutional grand jury proceedings.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2012 AUG 29 AM 10:04  
M. HOPE BLACKLEY

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the records of the South Carolina Department of Corrections, Applicant's PCR application, and Respondent's Return and Motion to Dismiss.

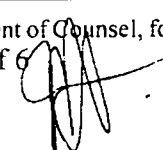
## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Statute of Limitations

This Court finds that the current application for post-conviction relief 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 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

---

I Applicant subsequently filed separate Motions for Appointment of Counsel, for Default, for Summary Judgment, and a  
Page 2 of 6



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.

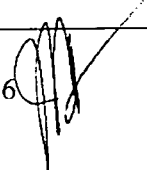
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). As it relates to the 1991 indictment (91-3059), the Applicant pled guilty to the offenses he challenges in this Application on July 12, 1993. The Applicant was therefore required to file the application before July 1, 1997. This Application was filed on June 21, 2011, which was well over ten years after the time that the statutory filing period had expired. As it relates to the 1998 indictment (98-2304), the Applicant pled nolo condendere to the offenses he challenges in this Application on August 24, 1998. The Applicant was therefore required to file the application before August 24, 1999. This Application was filed on June 21, 2011, which was, likewise, well over ten years after the time that the statutory filing period had expired.

The Applicant has alleged that his application should not be time barred because he alleges newly discovered evidence. However, a defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

This Court finds that the Applicant has failed to meet the requirements of after discovered evidence, in that the information he provides was available and known well before the filing of this application, is not material to his guilt or innocence, and would not change the result if a new trial

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 AUG 29 AM 10:05  
M. HOPKINS BLACKLEY



were to be held.

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). In addition, S.C. Code Ann. §17-27-70(c) (2003) 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." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and the evidence alleged does not meet the requirements of after discovered evidence.

#### Laches

This Court further finds that this application is summarily dismissed based on the doctrine of laches. The Applicant has filed this application over 14 years<sup>2</sup> after he was convicted of the charges. The doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records

<sup>2</sup> Over 19 years for 1991-GS-42-3059.



FILED  
CLERK OF COURT  
Spartanburg County  
2012 AUG 29 AM 10:05  
M. HOPKINS  
BLACKLEY

and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty pleas would now be unavailable. If the Applicant had sought post-conviction relief within a reasonable time after his plea, this problem would not exist. Therefore, this Court summarily dismisses the Application based on the Applicant's lack of diligence in processing his claim for relief.

#### Subject Matter Jurisdiction

This Court finds that the Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit and is summarily dismissed. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, this Court finds that the Applicant's indictments are facially valid and proper.

Therefore, this Court finds that this application is summarily dismissed for being barred by the statute of limitations and the doctrine of laches. This Court also denies the Applicant's request for default judgment as he has failed to show that his application has merit and this Court finds that



FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
AUG 29 AM 10:05  
M. HOPE BLACKBERRY

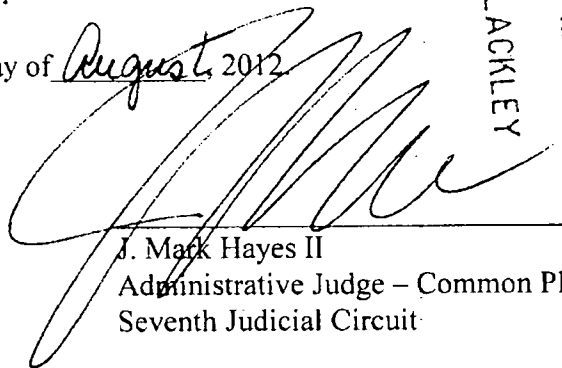
he was not prejudiced by the State's delay in filing its Return. Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). Furthermore, this Court denies Applicant's request for counsel to be appointed because it finds that a hearing is unnecessary.

**Summary**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

AND IT IS SO ORDERED this 28<sup>th</sup> day of August, 2012



J. Mark Hayes II  
Administrative Judge – Common Pleas  
Seventh Judicial Circuit

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2012 AUG 29 AM 10:05  
M. HOPE BLACKLEY

Spartanburg, South Carolina

# Spartanburg County

Spartanburg County Court House  
130 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304-3483

Phone (803) 58-1111  
Fax (803) 58-1121



M. Hope Blackley  
Clerk of Court

Sept. 4, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>th</sup> JUDICIAL CIRCUIT

Louise Coeter # 988401

CASE # 2011CP42265

Applicant

CERTIFICATE OF SERVICE

Spree vs  
Respondent

I certify that, on this date, I served a copy of the  
In this action dated 8-28-2012 on

Optional Fed. Dismissal  
9-5-12

By mailing to him/her, at his/her last known address, or depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jan Miller  
Stance White  
Louise Coeter

9-5-12  
(Date)

Carrie Seay  
(Signature)

ML

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS )  
SEVENTH JUDICIAL CIRCUIT )

Lonnie Geter, #288401, )

2011-CP-42-2695 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**RECEIVED**

OCT 10 2013

**S.C. SUPREME COURT**

FINAL ORDER

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 SEP -5 AM 8:44  
M. HOPE BLAOWLEY

This matter comes before this Court by way of an application for post-conviction relief filed June 21, 2011. Respondent made its Return and Motion to Dismiss on or about August 22, 2012, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated August 29, 2012, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated December 12, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Objection to the Conditional Order of Dismissal," dated September 20, 2012, Applicant argues that his application should not be summarily dismissed based on the Statute of Limitations. Applicant first asserts that he did not have access to evidence supporting his current claims for relief until April 4, 2011. Applicant attacks the validity of his indictment by alleging that there was no term of General Sessions at the time his indictment was true. Applicant also states that "it would be unseemly to believe that the Applicant would fully serve two

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2012 AUG 26 AM 11:05  
M. HOPE BLAOWLEY

VOID CLOKED IN ERROR

*Bl*  
01

(2) sentences [without] challenging the validity of his convictions.” Applicant further argues that his application should not be summarily dismissed based on the Doctrine of Laches. Applicant states that “the transcript is irrelevant as the Applicant’s allegations concern issues prior to anything recorded in the transcript,” concluding that the Doctrine of Laches is inapplicable to his application.

In a document captioned “Notice and Motion for Inordinate Delay Conditional Order of Dismissal,” dated November 25, 2012, Applicant alleges that the Respondent (the State) has inordinately delayed the Applicant in violation of the Fourteenth Amendment. The Respondent submits that the Applicant has not alleged specific facts as to how or why the Respondent has delayed the Applicant.

In a letter and an uncaptioned document dated January 13, 2013, Applicant reiterates his claim of inordinate delay by the Respondent and requests that a Final Order of Dismissal be submitted in this matter.

This Court has reviewed Applicant’s responses to the State’s Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds that Applicant’s current Application was filed outside the statute of limitations, is barred by the doctrine of laches, and that the Court had jurisdiction to handle his conviction and sentencing.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court’s Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

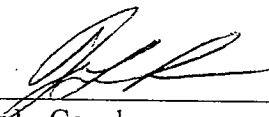
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate


FILED  
CLERK OF COURT  
SPRINGFIELD  
JAN 13 2013  
2:13 SEP - 5 AM 8:44  
H. HOPE BRADLEY

VOID CLOTTED IN ERROR  
FILED  
CLERK OF COURT  
SPRINGFIELD  
AUG 26 AM 11:05  
H. HOPE BRADLEY

appellate review. See Rule 203, SCACR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 30<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
Roger L. Couch  
Administrative Judge -- Common Pleas  
Seventh Judicial Circuit

  
\_\_\_\_\_, South Carolina.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 SEP -5 AM 8:44  
M. HOPE BLACKLEY

VOID ~~FILED~~ IN ERROR  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 AUG 26 AM 11:05  
M. HOPE BLACKLEY

Lonnie Geter #288401

P.C.I. Q-3 B-201

430 Oaklawn Road

Pelzer, S.C. 29669

AM

**RECEIVED**

OCT 07 2013

P.C.I. MAILROOM

LEGAL MAIL

The South Carolina Supreme Court

Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211