

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
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 James Bubba Patterson, SCDC #217543, )  
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 Applicant, )  
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 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-32-3490

**CONDITIONAL ORDER OF DISMISSAL**

FILED  
 2021 JUL 21 AM 9:14

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by James Bubba Patterson (Applicant) on October 14, 2020. The State made its return on June 16, 2021, requesting the action be summarily dismissed.<sup>1</sup>

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**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on November 16, 2012, following an investigation an armed robbery that occurred several months earlier at a jewelry store in West Columbia. During its April 2013 term, the Lexington County Grand Jury indicted Applicant for armed robbery (2013-GS-32-0891); grand larceny (2013-GS-

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<sup>1</sup> The State’s return was originally due on January 19, 2021. However, 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 grants the State’s request accept its return 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.).

32-0890); and possession of a weapon during the commission of a violent crime (2013-GS-32-1132).

On April 11, 2013, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr. Chief Public Defender Robert M. Madsen and Assistant Public Defender David M. Mauldin represented Applicant. Deputy Solicitor Suzanne Mayes and Lester McGill Bell, Jr., prosecuted the case. At the conclusion of the multi-day trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to concurrent terms of twenty years' imprisonment for armed robbery, ten years for grand larceny, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue[s]:

- WMC #2
- I. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?
  - II. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?
  - III. In his preliminary comments, did the trial judge err by indicating to the jury that a trial was a search for die truth?

Following briefing and oral argument, the Court affirmed Applicant's convictions and sentences in a published opinion issued January 4, 2019. *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019). Applicant's subsequent petition for rehearing and petition for writ of certiorari were denied. The case was remitted back to the circuit court on June 28, 2019. Applicant commenced this PCR action on October 14, 2020.

## II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
  - a. "Trial counsel was ineffective for not 'objecting' to the use of mug-shot photos used[sic]. Nor did he request to view the video surveillance tape of the date November 15, 2021, photo lineup shown to the vic Frank Mancine."
2. Ineffective assistance of appellate counsel
  - a. "Trial counsel adequately preserved several issues for appellate review that called for reversal and remand for a new trial. However, appellate counsel only raised 'DNA' argument on direct appeal and appellate counsel's argument and research was 'deficient' and fell below the professional norms under Strickland v. Washington."
  - b. "Appellate counsel never challenged or addressed the comp to stand trial hearing on December 3, 2014, by Dr. Tross; nor did he address the Blair hearing by Judge Addy [in] December 2015. Both issues were preserved for appeal and should have been raised on direct appeal."
  - c. "Appellate counsel did not address the Applicant's confrontation rights violations that trial counsel 'objected' and were preserved for appeal. Trial counsel objected to the chain of custody the State was allowed to willfully violated[sic] Rule #6 of the South Carolina Rules of Criminal Procedure, the rule for chemical analysis and chain of custody. The confrontation clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made for the purposes of proving a particular fact through the in-court testimony of a scientist who did not sign the laboratory or perform or observe test lab reported in the certification."
  - d. "The constitution provides every person accused of a crime the right to confront his accusers. That promise was broken in the Applicant's trial when the Sate never made Officer Chuck Bramlet of the West Columbia Police Department available or Applicant to cross-examine him pretrial in regards to the search warrant. At trial, the State used Captain Joseph Odom of the

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Richland County Sheriff's Department to testify as to what Officer Chuck Bramlet (who had passed away) would have said. However, appellate counsel totally ignored the confrontation rights 'violations' that were clearly preserved. Also, there were several other confrontation rights violations that trial counsel preserved in regards to DNA analysis, etc."

3. Due process violation

- a. "On cross-examination, trial attorney Mr. Madsen, see Trial transcript p. 417; line 3 through 11. Captain Joseph Odom of the Richland County Sheriff's Department states that the deceased investigator Chuck Bramlet processed everything and took all of the photos of the van in question. However, the State never made Investigator Chuck Bramlet available for Applicant to confront or question in regards to the pictures that were taken of the van."
- b. "The State also allowed Ms. Jennifer Aycock, forensic technician for SLED's evidence control department testify what Ms. Nikki Perry Hughes and Ms. Doris Yarborough did with evidence without the Applicant confronting them."

4. "The Applicant's due process rights were violated . . . when the State was allowed to willfully violated[*sic*] Rule #6 S.C.R.CrimP., the rule for chemical analysis and failed to establish a complete chain of custody."

- a. "Investigator James Sullivan of the West Columbia Police Department on page 274; admits that he is the person that on May 9, 2012, after putting on protective equipment, he picked the 'hat' up off the ground and put it into a locked vault in his vehicle. He logged this into the West Columbia Evidence Repository. Whereas the 'hat' was later transported by Investigator James Sullivan to the State Law Enforcement Division (SLED) for further testing."
- b. "There is no time frame in regards to how long the 'hat' was left in the West Columbia's Evidence Repository. Nor is there any mention of anyone at SLED signing for the evidence when it was dropped off; no date or time it was dropped off. This is a clear violation of Rule #6, S.C.R.CrimP (B) Certified or sworn statement . . ."
- c. On page 428 of the Applicant's trial transcript, Detective Paige McGraw of the West Columbia Police Department. Under oath testifies that at the Court hearing on December 14, 2015, she took two (2) buccal DNA swabs. One of the left and right cheeks of the

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Applicant. However, she states that after labeling it with date and time the swabs were placed in a bag that she sealed and initialed and took to SLED. There's no mention as to who she left the swabs with at SLED; who signed for them; or how long they remained at SLED because there is no time frame given and no SLED officials signatures."

5. Abuse of discretion

- a. "[T]he trial court abused its discretion by allowing the State to allude to evidence that was not admitted into evidence. This was done several times in the presence of the jury and calls for reversal of trial and conviction."
- b. "Trial counsel never 'objected' to this miscarriage of justice that results in a reversal of conviction and new trial. The State's solicitors in this case Ms. Suzanne Mayes and Mr. Lester McGill Bell alluded to evidence not admitted into evidence. Before the trial began in opening statements by Mr. Bell, see p. 168 of trial transcript. Also, in Ms. Mayes closing arguments on p. 539 and 540 of trial transcript. The gun owned by Mr. Frank Mancine, a jeweler at K & M jewelry, that was robbed on May 9, 2012, was never admitted into evidence. Nor was the white 1995 Plymouth Voyager van admitted into evidence at the Applicant's trial. . . This practice disregard[sic] indeed violates the rules governing the admission of evidence."
- c. "The Court allowed witnesses in the presence of jury two photos of the White 1995 Plymouth Voyager van that was on the lot of the Eagle One Towing. . . The Court could have allowed the jury to personally go view the van at Eagle One Towing. Instead elected to publish illegal photos into evidence. Also, allowed State's witnesses to testify about the van . . ."
- d. "Also see excerpts[sic] of the trial transcript and the following witnesses[sic] testimony -- Captain Bruce Wade, p. 336 and 337. Mr. Brendon Pennington, Deputy Sheriff, p. 374. Anthony Kennedy p. 385. Ms. Clarissa DuBard on 394 and Captain Joseph Odom p. 403 and 40."

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Before this Court are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and

complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Because there is no genuine issue of material fact which would necessitate an evidentiary hearing, this Court hereby informs the parties of its intent to dismiss the application as procedurally barred. *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); *See also 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). Pursuant to section 17-27-70 and -80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law:

#### **Statute of Limitations**

This action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). 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, 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(A)–(C).

Our 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. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Section 17-27-45(A) provides that an applicant must file his application within one year after the entry of a judgment of conviction. In this case, Applicant was convicted on April 11, 2016, and the remittitur from his direct appeal was issued on June 28, 2019. This application was filed on October 14, 2020—several months after the requisite filing period expired.

Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling

has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

*APPLICANT MAY ADDRESS IN HIS RESPONSE WHETHER AND TO WHAT EXTENT ANY ISSUES RELATED TO COVID-19 MAY HAVE PREVENTED HIM FROM MEETING THE STATUTE OF LIMITATIONS.*

**IV. CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), this 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 (20) 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 Lexington County Clerk of Court and shall serve opposing counsel at the following address:

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Office of the Attorney General  
Lillian L. Meadows  
Post-Conviction Relief Division – 11<sup>th</sup> Circuit  
Post Office Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Lexington County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 15<sup>th</sup> day of July, 2021.

*William P. Keesley*  
WILLIAM P. KEESLEY  
Chief Administrative Judge  
Eleventh Judicial Circuit

Edgefield, South Carolina