

represented the State. Pursuant to the negotiated plea, Applicant was sentenced to twenty years; she received credit for time served on house-arrest. Applicant did not file a direct appeal.

ALLEGATIONS

Applicant untimely filed this PCR action on November 17, 2022. In her application, Applicant alleges she is being held in custody unlawfully for the following reasons:

Ineffective assistance of counsel:

- a. Defendant was prejudiced by trial counsel erroneous advice of taking a guilty plea and comparing case of like nature to avoid a harsher sentence denied defendant of her Sixth Amendment.
- b. Trial counsel was ineffective for not consulting with a forensic pathologist and presenting a pathologist testimony at trial on behalf of the petitioner.
- c. Invalid indictment.

As relief, Applicant requests “new trial, vacated sentence.” Before this Court are the Charleston County Clerk of Court records regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, and the records from this current PCR action.

MOTION TO DISMISS

The State moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code, asserting no genuine issues of material fact necessitate an evidentiary hearing. Because there are no questions of law or fact to necessitate a hearing, the State requested this Court issue a Conditional Order of Dismissal indicating the Court’s intent to dismiss the application and its reasons for doing so. 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) (finding summary disposition appropriate when no facts need to be developed and the applicant is



not entitled to relief). This Court has reviewed the application and the records in this case and finds there are no genuine issues of material fact to warrant a hearing. Therefore, summary dismissal is appropriate. Set forth below are the Court's findings:

Statute of Limitations

Applicant's application should be summarily dismissed for failure to comply with the filing procedures of the Uniform PCR Act.² "An application for relief pursuant to this chapter *must* be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur . . ." § 17-27-45(A). The statute of limitations applies to all PCR applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). The circuit court may "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." § 17-27-70(c).

Here, Applicant was sentenced on November 9, 2021. She did not file a direct appeal. The PCR application was therefore due on or before November 10, 2022. This application was filed on November 17, 2022—after the filing period expired. Accordingly, this application shall be summarily dismissed as untimely.

CONCLUSION

WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code and Rule 12(b)(6), SCRCP, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed

² S.C. Code Ann. § 17-27-10 to -160.

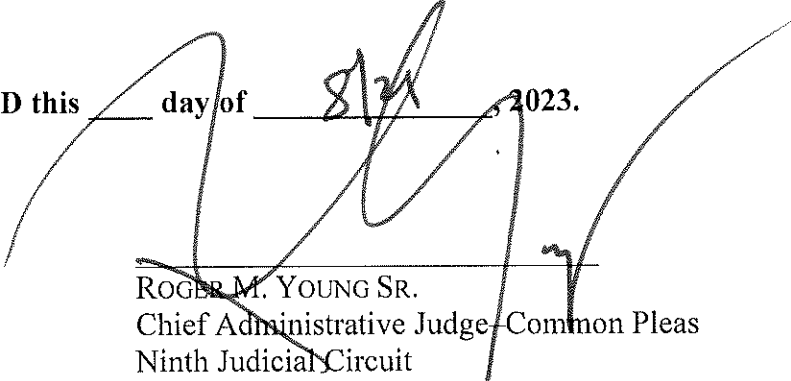


in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon her to show why this Order should not become final. Applicant shall file any reasons she may have, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:


Office of the Attorney General
Danielle Dixon, Esquire
PCR Division – Ninth Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that her response to this order must be actually received by the Charleston County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, 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 8/21 day of August, 2023.



ROGER M. YOUNG SR.
Chief Administrative Judge - Common Pleas
Ninth Judicial Circuit


_____, South Carolina