

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Darnell East Hudson,)
S.C.D.C. No. 227328,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
2013-CP-23-0993

FILED-CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA
2013 AUG 21 PM 4:02

CONDITIONAL ORDER OF DISMISSAL

EXHIBIT

C

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 19, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

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. See Peloquin v. State; 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had expired.

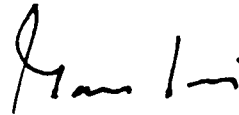
A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8 day of Aug., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.