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STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Hillary Jean Rexrode,

2013-CP-24-0017

2013 MAR 11 PM 32

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before this Court by way of an application for post-conviction relief filed January 7, 2013. The State made its Return and Motion to Dismiss on February 15, 2013

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is not presently confined. The Applicant was indicted at the November 2010 term of the Greenwood County Grand Jury for two counts of Obtaining Controlled Substance by Fraud (2010-GS-24-1561, -1564) and two counts of Use of DEA registration number registered to another (2010-GS-24-1565, -1566). Maura Dawson, Esquire, represented the Applicant¹. On January 27, 2011, the Applicant pled guilty to all charges as indicted. The Honorable Frank R. Addy, Jr. sentenced her to confinement, pursuant to negotiations, for a period of five (5) years, suspended upon three (3) years' probation for Obtaining Controlled Substance by Fraud (-1564), and one (1) day, concurrent, with credit for time served, for each of the other charges. The Applicant did not appeal her sentence or conviction.

¹ According to the Application, Ms. Dawson was employed by the law office of Richard J. Breibart.

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In her current application for post-conviction relief the Applicant alleges that she is entitled to relief for the following reasons:

1. "My guilty plea was not freely and voluntarily entered."
 - a. "My attorney, Richard Breibart, advised me that I had to plead guilty to the felony charges in state court to avoid being prosecuted in federal court. I was told that if I entered the Pre-Trial Intervention program, I would be prosecuted in federal court. At the same time I believed what Mr. Breibart told me. I had retained him in this matter and I had no reason not to believe what he told me was true. Subsequently I read the newspaper about Mr. Breibart's arrest in September of 2012. Upon reading the allegations against him I realized that his advice to me was not factual and that I had entered a plea based upon a false statement from Mr. Breibart. Had I known the true facts, that there was in fact not federal investigation or danger of federal charges, I would not have entered a guilty plea."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that this Application for Post-Conviction Relief should 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. S.C. 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 judgement 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.

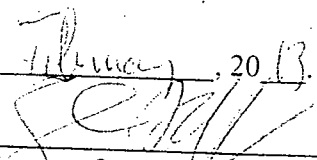
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) she challenges in this Application on January 27, 2011. The Applicant therefore was required to file her application by January 28, 2012. This Application was filed on January 7, 2013, which was almost a year after the statutory filing period had expired.

A motion for summary judgement 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 judgement 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.

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 her to show why this Order should not become final. The Applicant shall file any reasons she may have with the Greenwood County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 27 day of February, 2013.


EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Lanier, South Carolina