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STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
GREENWOOD, SC)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2012 MAR 29 AM 9 12

Rocksell N. Wright, Jr., #256078,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

2010-CP-24-1208

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GREENWOOD COUNTY
SC.

FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 15, 2010. The Respondent (the State) made its Return and Motion to Dismiss on January 4, 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 January 9, 2012, provisionally denying and dismissing this action, while giving the 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 is an Affidavit of Service dated February 8, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document titled "Applicant's Memorandum of Law In Support of his Post-Conviction relief Application," the Applicant argues his 1983 guilty plea was uncounseled and therefore, unconstitutional when used for enhancement purposes.¹ This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings,

1 The Applicant is serving a life sentence pursuant to the 2/4/1999 trial before the Honorable Joseph J. Watson.

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and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. The Applicant has also shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). 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 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). The Applicant was convicted of the offense(s) he challenges in this Application on September 1, 1983. The Applicant was therefore required to file his application before July 1, 1996. This Application was filed on September 15, 2010 which was over fourteen (14) years after the statutory filing period had expired. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

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 hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

(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."

Additionally, this Court finds this application for post-conviction relief is barred by the doctrine of laches. The Applicant has filed this application ^{twenty-seven (27)}~~ten (10)~~ years after he was convicted. 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 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.

Applicant is challenging his 1983 Greenwood County conviction that was used for enhancement purposes.

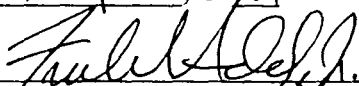


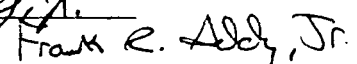
Furthermore the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. §17-27-45(a). The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is now unavailable. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. 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 for being barred by the doctrine of laches.

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 Greenwood County Clerk of Court and shall serve opposing counsel at the following address:

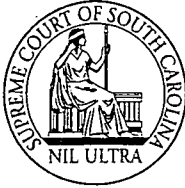
Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 9th day of January, 2011.


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


Frank R. Adley, Jr.

Greenwood, South Carolina



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Rocksell Wright SCDC# 256078
DATE: 7-5-12

We are in receipt of your notice of appeal. It will be necessary for you to provide this office with the following required documents within **ten (10)** days of the date of this notice. Failure to provide the requested documents may result in dismissal of this matter.

proof of service showing notice of appeal was served on opposing counsel,
(Attorney General's Office)

a copy of the final order of dismissal

a copy of the conditional order of dismissal (if one was issued)

a copy of the conditional order of dismissal dated _____

2010-CP-24-01208

Please return this sheet with the requested documents. Thank you!

Copy of all orders on appeal
are required.

in custody unlawfully for the following reasons:

1. "Invalid Guilty Plea used to enhance punishment to a life sentence on
"Indictment 1998-GS-23-4903."

Incorporated herein are the Clerk of Court records, the South Carolina Department of Corrections' records, and the Applicant's PCR application. The Respondent reserves the right to amend this information upon receipt of any relevant materials.

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:

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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

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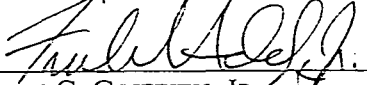
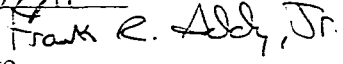


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Chief Administrative Judge
Eighth Judicial Circuit

Greenwood, South Carolina