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OCT 15 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
South Carolina Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Judge

Case No. 2011-CP-18-0603

State of South Carolina,

Respondent,

v.

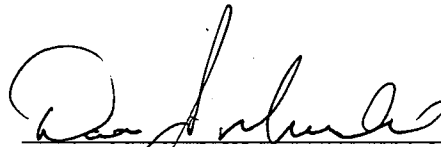
Donald J. Mauldin,

Appellant.

NOTICE OF APPEAL

Donald J. Mauldin appeals the Order of Dismissal of the Honorable Maite Murphy dated March 16, 2010. Appellant received written notice of entry of this Order of Dismissal on September ~~11~~¹⁵, 2014.

September 23, 2014



Donald J. Mauldin
SCDC ID #: 00297627
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29472
Appellant

THE STATE OF SOUTH CAROLINA
South Carolina Supreme Court

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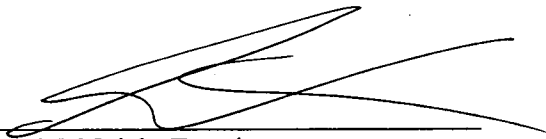
Appellant.

CERTIFICATE OF SERVICE

I, Scott I. McNeish, certify that I served the Notice of Appeal, dated October 10, 2014, on the parties to the appeal by Regular U.S. Mail postage prepaid, addressed as indicated below:

South Carolina Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211-1330

October 10, 2014



Scott I. McNeish, Esquire
125 Crosscreek Drive, Suite 106
Summerville, SC 29485
Attorney for Appellant

SWORN to before me this

10th day of October, 2014.

Lee Hill Patton

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 7-19-2023.

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
)
 Donald J. Mauldin,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-18-0603

ORDER OF DISMISSAL

CERTIFIED COPY
 2011 SEP 11 AM 10:54
 Clerk of Court
 DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 18, 2011. In its Return and Motion to Dismiss, filed on or about July 8, 2011, Respondent requested that the application be summarily dismissed as untimely pursuant to S.C. Code Ann. § 17-27-45. On September 26, 2011, the Honorable Edgar W. Dickson, acting in his capacity as Chief Administrative Judge of the First Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. Applicant responded on July 27, 2011, alleging that mental health concerns prevented him from timely filing his application. Based on his response and in light of Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) (requiring the tolling of the statute of limitations if Applicant can establish that mental incompetence prevented the timely filing of his or her application), the court granted a hearing on the State's motion to dismiss.

A hearing on the State's motion to dismiss was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Scott McNeish, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence

presented at the hearing, along with a review of all records provided to the Court, this Court finds that this application must be dismissed as untimely filed pursuant to S.C. Code Ann. § 17-27-45.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Dorchester County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and appellate records. The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted at the May 2007 term of the Dorchester County Grand Jury for Homicide by Child Abuse (2007-GS-18-0377). Brian Burke, Esquire, represented him. On December 10, 2007, Applicant appeared before the Honorable Diane S. Goodstein and pled guilty as indicted. Pursuant to a negotiated cap between Applicant and the State, Judge Goodstein sentenced Applicant to fifty years imprisonment.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Mauldin, Op. No. 2010-UP-070 (S.C. Ct. App. filed February 1, 2010). The Remittitur was sent on February 17, 2010.

In his application for post conviction relief Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel.
 - a. "Counsel fail to request a competency evaluation where a history of mental disorder exist."

¹ 378 S.C. 738 (1967).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter must be summarily dismissed because Applicant has failed 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 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 he challenges on December 10, 2007. Applicant's appeal was resolved February 17, 2010. Therefore, Applicant was required to file his application on or before February 18, 2011. This Application was filed on March 18, 2011, a month beyond the time that the statutory filing period had expired.

At the hearing, Applicant testified that prolonged mental health issues, including depression and schizophrenic episodes, along with consistent drug use while incarcerated, prevented him from filing his application within one year of the conclusion of his appeal. In support of this, Applicant submitted: a letter from the Department of Mental Health stating that he was treated for ADHD as a child (Applicant's Ex. No 1); learning disability placement forms from ages 11 and 14 (Applicant's Ex. No 2 and 3); and SCDC Medication Administration Record (Applicant's Ex. No 4). However,

Applicant testified that he filed his application when another inmate gave him a blank application and told him that he was beyond the statutory time limit. He testified that he discussed his case with this inmate and provided him the necessary information to complete his application.

This Court finds that Applicant has failed to establish that mental incapacity prevented him from timely filing his application as required by Ferguson. This Court notes that Applicant testified that he was able to discuss his case and provide the pertinent information required to complete his application with another inmate. This Court finds that Applicant has failed to establish that mental incompetency prevented timely filing within a year of his direct appeal, and therefore, finds that the statute of limitations should not be tolled.

A motion for summary judgment 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 post-conviction relief 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 judgment as a matter of law."

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant failed to file this application within the time constraints required by S.C. Code Ann. § 17-27-45. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

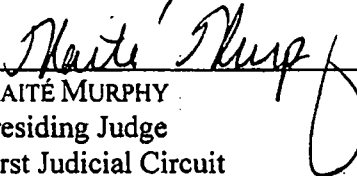
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a

right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief shall be dismissed with prejudice for failure to file within the time constraints required by S.C. Code Ann. § 17-27-45.; and
2. Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 22 day of Aug, 2014.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

Columbia, South Carolina.

McNEISH LAW FIRM, LLC

Scott I. McNeish, Esq.

e-mail: smcneish@mcneishlaw.com

October 10, 2014

SENT VIA FIRST CLASS MAIL

South Carolina Supreme Court
Attn: Clerk of Court
P.O. Box 11330
Columbia, SC 29211-1330

RECEIVED

OCT 15 2014

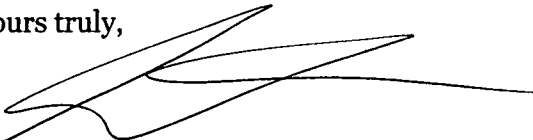
Re: State of South Carolina v. Donald J. Mauldin
Case Number: 2011-DR-18-0603

S.C. SUPREME COURT

Dear Clerk of Court:

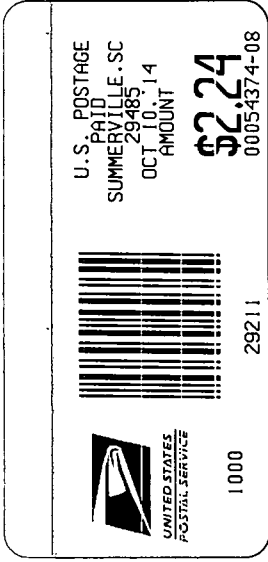
Enclosed please find an original and three copies of the Notice of Appeal and the Order of Dismissal in the above-referenced matter, as well as, the Certificates of Service. Upon filing the enclosed please return the filed copies to me the self-addressed stamped envelope provided. If you have any questions or concerns regarding the enclosed please feel free to contact me by telephone at (843) 376-2380 or by e-mail at smcneish@mcneishlaw.com. With kindest regards, I am

Yours truly,



Scott I. McNeish

Cc: Client
South Carolina Commission on Indigent Defense



Scott I. McNeish, Esquire
McNeish Law Firm, LLC
125 Crosscreek Drive, Suite 106
Summerville, SC 29485

South Carolina Supreme Court
Attn: Clerk of Court
P.O. Box 11330
Columbia, SC 29211-1330