

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

HONORABLE R. LAWTON MCINTOSH

2013-CP-04-1548

FREDRICO D. RIDLEY, #271858

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

RESPONDENT.

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MAR 20 2015

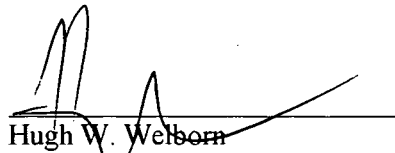
S.C. Supreme Court

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**NOTICE OF APPEAL**

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Fredrico D. Ridley, #271858 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Lawton McIntosh, Circuit Court Judge on February 9, 2015, and Order of Dismissal issued on March 12, 2015, and filed on March 13, 2015. The Appellant received Order of Dismissal on March 16, 2015.



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Attorney for Fredrico D. Ridley, #271858

Other Counsel of Record:  
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on March 16, 2015, addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



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Anderson, South Carolina

16 March, 2015

STATE OF SOUTH CAROLINA  
FILED - CLERK'S OFFICE  
ANDERSON SC )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT

2015 MAR 13 P 1:51

Case No. 2013-CP-04-1548

Fredrico D. Ridley,  
S.C.D.C. No. 271858,

COMMON PLEAS AND  
GENERAL SESSIONS )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

ORDER OF DISMISSAL

A TRUE COPY

MAR 13 2015

*Richard D. Hunter*  
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed by Fredrico Ridley (Applicant) on June 27, 2013, and the amendments made on May 27, 2014, and July 14, 2014. Respondent made its Return and Motion to Dismiss on August 30, 2013, requesting the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all records attached thereto, this Court issued a Conditional Order of Dismissal filed September 27, 2013.

A hearing was held before the Honorable R. Lawton McIntosh at the Anderson County Courthouse on February 9, 2015. Applicant was present and represented by Hugh Welborn, Esquire. Respondent was represented by Justin Hunter, Esquire, of the South Carolina Office of the Attorney General. Applicant testified on his behalf.

### I. PROCEDURAL HISTORY

Applicant was indicted at the July 2000 term of the Anderson County Grand Jury for murder (2000-GS-04-2159), armed robbery (2000-GS-04-2160), assault and battery with intent to kill (2000-GS-04-2164), grand larceny greater than \$1,000 (2000-GS-04-2161), and failure to

stop for a blue light (2000-GS-04-2162). On January 8, 2001, Applicant pled guilty as indicted. Applicant was represented by Robert Gamble, Esquire. The Honorable J.C. Nicholson sentenced Applicant to a term of imprisonment for life for murder, a term of thirty (30) years for armed robbery, a term of twenty (20) years for assault and battery with intent to kill, a term of five (5) years for grand larceny, and a term of three (3) years for failure to stop for a blue light. The sentences were to served concurrently. Applicant did not appeal his conviction or sentence.

## II. ALLEGATIONS

Applicant filed an application for post-conviction relief on June 27, 2013, alleging he is being held unlawfully for the following reasons:

1. Applicant was purportedly sentenced to life without parole as a juvenile.
2. Applicant claims he never had a direct appeal or PCR hearing.
3. Ineffective Assistance of Counsel
  - a. "Attorney failed to investigate and present substantial mitigating evidence."

On May 27, 2014, Applicant submitted a *pro se* Amendment and Motion to Appoint Counsel. In this Amendment, Applicant alleges:

1. Subject Matter Jurisdiction
  - a. "Trial court was without jurisdiction to enter a conviction on murder and armed robbery as indictment, while signed by the Grand Jury Foreman, did not indicate whether a finding was made as a true bill, no bill, nol pros (etc)..."

On July 14, 2014, Hugh W. Welborn, Esquire, was appointed to represent Applicant on this matter. By letter received by Respondent from Mr. Welborn on August 7, 2014, Applicant's counsel notified Respondent that Applicant wished to amend his PCR Application to include the following allegations:

1. Subject Matter Jurisdiction
  - a. "[Applicant's] attorney did not inform [Applicant] that the Grand Jury did not have to "take action" on [Applicant's] indictment."

2. Ineffective Assistance of Counsel

- a. "[Applicant's] attorney failed to investigate and present substantial mitigating evidence during the sentencing phase of [Applicant's] guilty plea."

**III. SUMMARY OF TESTIMONY PRESENTED AT PCR HEARING**

Respondent renewed its motion to dismiss pursuant to the procedural bar against untimely litigation and pursuant to the affirmative defense of laches.

Applicant testified on his own behalf. He testified that he was unaware of his statutory right to pursue post-conviction relief for over a decade because: (1) he purportedly has a low IQ; and (2) that he was seeking psychiatric help for hearing voices and having other issues. Applicant testified that he moved in and out of foster homes and group homes growing up. Applicant stated that he does not remember the last grade he completed in school but that it may be around fourth or fifth grade. He further stated that he was treated for mental health issues when he was younger in a group home but that he had not had any treatment later throughout his life. Applicant claimed to have anger issues and suffer from auditory and visual hallucinations. Applicant claimed he can read and write a little bit and that someone helped him write his PCR application.

Applicant testified that he does not fully understand post-conviction relief and that he did not timely file his first application because he did not understand the procedure of doing so. He testified that he learned about his ability to file a PCR application from his roommate when his roommate asked to see his indictment and transcript. When asked if he heard of other inmates filing PCR applications, he testified that everyone was on their own and no one was talking about that when he arrived at prison. Applicant did agree that he was able to work many jobs throughout his incarceration.

#### IV. APPLICABLE LAW

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. § 17-27-70(b) and (c) (2003). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. See S.C. Code Ann. § 17-27-80. (PCR actions are governed by usual rules of civil procedure). See Leamon v. State, 363 S.C. 432, 434 S.E.2d 494 (2005).

The Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-45(A), provides the proper procedure for filing a PCR application, stating:

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.

See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. 51 Am.Jur.2d, Limitation of Actions § 18, at 603 (1970).

"Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations. Equitable tolling is reserved for extraordinary circumstances." Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008) (internal citations omitted). The South Carolina Supreme Court has recognized equitable tolling in the limited circumstance of mental incompetency. Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009). "A claim of mental incompetence does not constitute a *per se* reason to toll the statute of limitations...Rather,

the critical inquiry remains whether the circumstances preventing a petitioner from making a timely filing were both beyond the petitioner's control and unavoidable despite due diligence." Id. (citing Com. V. Carneal, 274 S.W.3d 420 (Ky. 2008).

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the Applicant at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Respondent's Return and Motion to Dismiss, the Conditional Order of Dismissal, and the legal arguments presented by the attorneys. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony to be lacking credibility. This Court finds that Applicant has presented no evidence to warrant an exception to the procedural bar forbidding Applicant from filing the application after the one-year statute of limitations. This Court finds that Applicant has not shown that any extraordinary circumstances existed that prevented him from filing his application in a timely manner. Applicant filed this application over twelve (12) years after he was sentenced and over eleven (11) years after the statute of limitations had expired. Applicant had ample opportunity to file this application since he was sentenced but abandoned his statutorily provided opportunity to do so.

### A.

This Court finds that Applicant has presented no credible testimony or evidence to exempt him from the procedural bar against untimely post-conviction relief litigation. Ignorance

of the statute of limitations is no excuse and does not rise to the level of an extraordinary circumstance. See Leamon. The statute of limitations is an objective statute and unless certain extraordinary circumstances are shown in conjunction with the exercise of due diligence, Applicant must have filed this application on or before January 9, 2002. Applicant filed his application on June 27, 2013, which was well after the statute of limitations had expired. Applicant slept on his rights and is now precluded from attacking the validity of his guilty plea.

This Court further finds that Applicant has presented no evidence showing that the statute of limitations should be tolled due to his claim of incompetency. This Court finds that Applicant has presented no evidence to corroborate his claim that he lacked the educational experience to or suffered from any mental illness to support his claim of incompetency. Applicant's testimony regarding his mental state is self-serving, conclusory, and completely lacking in credibility.

This Court also finds that Applicant's PCR application must be dismissed as barred by the doctrine of laches. Laches is "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party." Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002) (quoting Hallums v. Hallums, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988)).

This Court finds that Applicant has offered no legitimate explanation for the delay in filing his PCR application. To ensure finality of litigation, our courts require reasonable diligence in pursuing 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 v. State, 276

S.C. 282, 283, 277 S.E.2d 890, 890-91 (1981). This Court finds that Applicant's delay has greatly prejudiced Respondent and its ability to defend Applicant's claims. Due to Applicant's neglect in filing his application, a full transcript of Applicant's guilty plea hearing may no longer be available.<sup>1</sup> Accordingly, this Court dismisses Applicant's application as barred by the doctrine of laches.

**B.**

This Court finds Applicant's allegation that he was sentenced to life without parole as a juvenile in violation of the United States Supreme Court's holding in Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), is without merit. This Court takes judicial notice that Applicant was born on April 28, 1980, committed the offenses he challenges on March 19, 2000, and was therefore nineteen years and ten months old at the time he committed the crimes at issue. This Court finds that Miller is inapplicable to Applicant's case because the holding in Miller found an Eighth Amendment violation when a court sentences a person to life without parole when that person was *under* eighteen years old at the time he or she committed the crime in question.

**C.**

This Court has reviewed Applicant's records from the South Carolina Department of Corrections and finds that Applicant has spent the majority of his incarceration at Level 3 facilities. This Court finds Applicant's testimony that he was unaware for over twelve years of his ability to file a PCR action to be incredible. Additionally, this Court finds Applicant's self-serving testimony regarding his mental defects to also be incredible, especially in light of his

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<sup>1</sup> Rule 607 of the South Carolina Appellate Court Rules states that transcripts must be retained for a period of five years. If a transcript is not ordered within the five-year period, the records are destroyed.

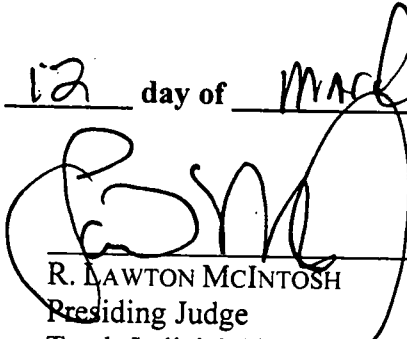
S.C.D.C. records showing Applicant has maintained steady employment throughout his incarceration.

**CONCLUSION**

IT IS THEREFORE ORDERED that, based on the forgoing and for the reasons set forth in the Court's Conditional Order of Dismissal, Respondent's Motion to Dismiss is hereby granted and Applicant's application for post-conviction relief is dismissed with prejudice.

This Court hereby advises 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 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 12 day of March, 2015.

  
\_\_\_\_\_  
R. LAWTON MCINTOSH  
Presiding Judge  
Tenth Judicial Circuit

Anderson, South Carolina.

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March 16, 2015

South Carolina Supreme Court  
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MAR 20 2015

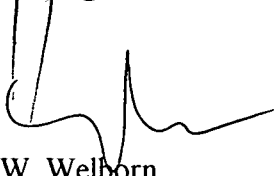
**S.C. Supreme Court**

In RE: Fredrico D. Ridley #00271858 vs. State of South Carolina  
Case #: 2013-CP-04-1548

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense  
cc: Office of the Attorney General

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