

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
Renwick D. Mose, #271319)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2014-CP-45-125

FINAL ORDER OF DISMISSAL

2015 FEB 13 AM 8:52
FILED
CLERK OF COURT
THIRD JUDICIAL CIRCUIT
WILLIAMSBURG, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 10, 2014¹. The Respondent made its return on September 26, 2014, requesting the application be summarily dismissed based upon the statute of limitations.

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 signed October 1, 2014 and filed October 17, 2014, 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 by reference is an Affidavit of Service dated November 20, 2014, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion in Response to Conditional Order of Dismissal" and received on December 10, 2014, the Applicant argues that he filed his PCR application in a timely manner by placing his application into the institutional mailbox on February 18, 2014 on the days it was notarized by the notary public." Applicant argues that once he placed the application in the mail it is therefore deemed file by the courts under the "mail box rule."


¹ The application was received by the South Carolina Attorney General's office on July 11, 2014.

Applicant asserts under the mailbox rule he has filed his application on February 18, 2014. Applicant has attached various documents in support of his argument including an affidavit of the Applicant.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court notes S.C. Code Ann. §17-27-40 provides that a proceeding is "commenced" by filing an application with the clerk of court. Mailing does not constitute filing under § 17-27-45(A). Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001). This Court notes the Applicant was pled guilty on March 7, 2013. As this action was filed on March 10, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003).

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 5 day of July, 2015.


R. FERRELL COTHRAN, JR.
Chief Administrative Judge
Third Judicial Circuit Court

Manning, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated C.M. - Toliver (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 20th day of November 2014, I served the Conditional Order of Dismissal, on Inmate Renwick D. Mose, SCDC Inmate #271319, by delivering personally and leaving a copy of the same at Lee Correctional Institution. Deponent is not a party to this action.

s/ C.M. - Toliver

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 20 day of Nov, 2014

Delma Jones (L.S.)

Notary Public for South Carolina

My Commission Expires: 11-4-2015

ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal is admitted at the South Carolina Department of Corrections (Lee Correctional Institution), Bishopville, SC, County, SC, this 20th day of November, 2014.

s/ Renwick Mose
Inmate
SCDC Inmate #: 271319

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Renwick D. Mose, # 271319,)

2014-CP-45-125)

Applicant,)

v.)

**CONDITIONAL ORDER)
OF DISMISSAL)**

State of South Carolina,)

Respondent.)

2014 OCT 17 PM 2:31
SHARON W. KINGSTERS
CLERK OF COURT
WILLIAMSBURG, S.C.
FILED

This matter comes before this Court by way of an application for post-conviction relief filed March 10, 2014¹. In its Return, Respondent requests that the action be summarily dismissed.

PROCEDURAL HISTORY

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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the July 2011 term of the Williamsburg County Grand Jury for burglary—first degree and assault and battery—first degree (2011-GS-45-0105). He was represented by Cezar McKnight, Esquire. On March 7, 2013, the Applicant pled guilty to the lesser included offense of burglary-second degree and as indicted for assault and battery—first degree. The Honorable Clifton Newman sentenced Applicant without negotiations or recommendations to a twelve year term of imprisonment for burglary—second degree and ten year term of imprisonment for assault and battery—first degree. The Applicant did not appeal his guilty plea or sentence.

¹ The application for post-conviction relief was received by Respondent on July 11, 2014.

In his current application, the Applicant argues that he is being held in custody unlawfully based on the following allegations:

1. "A violation of my 14th amendment right to procedural process."
 - a. "My right to present at open and fair procedural hearing for my preliminary hearing."
2. "A violation of my 6th Amendment right to effective assistance of counsel."
 - a. "My plea was made unknowingly and involuntarily, resulting from duress from my attorney and I was pressured into a plea without being fully discussed of the exculpatory evidence by my attorney."
3. "A violation of my 6th Amendment right to a speedy trial."
 - a. "There was a pre-indictment and a post-indictment delay in my case that lawyer did not pursue or even try to challenge."
4. "A violation of my 5th amendment right to properly be indicted by grand jury."
 - a. "I was not properly indicted by grand jury."

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.

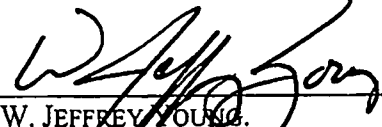
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges in this Application on March 7, 2013. This Application was filed on March 10, 2014 which was well after the statutory filing period had expired.

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) (1985) 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 judgment as a matter of law."

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, factual or legal, with the Williamsburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 1 day of Oct, 2014.


W. JEFFREY YOUNG
Chief Judge for Administrative Purposes
Third Judicial Circuit

Sumter, South Carolina.