

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Aaron Bryant Keys, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2014-CP-23-4305

**CONDITIONAL ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL D. WOODBURN  
2014 DEC 23 AM 10 37

This matter comes before the Court by way of a post-conviction relief application filed August 4, 2014. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the Edgefield Federal Correctional Institution. The Applicant was indicted at the June 1990 term of the Greenville County Grand Jury for possession of crack cocaine (1990-GS-23-3931, count 1) and possession with intent to distribute crack cocaine (1990-GS-23-3931, count 2). The Applicant also waived presentment on the charge of second-degree burglary (1990-GS-23-4066). He was represented by Edward W. Miller, Esquire.

On June 22, 1990, the Applicant pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to concurrent terms of 5 years for possession of crack cocaine and 5 years for second-degree burglary. The Applicant did not appeal.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1. Miscarriage of justice.



- a. The Applicant did not knowingly plead guilty to a violent form of second-degree burglary.
2. Violation of due process.
  - a. The Applicant “did not have any prior convictions before 1989, and without (2) two prior convictions in South Carolina a Burglary Building Non-dwelling can only be 3rd-degree burglary.”

### III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina 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 Applicant pled guilty to the offenses he challenges in this application on June 22, 1990. This application was filed on August 4, 2014, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (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 that the moving party is entitled to judgment as a matter of law.”

### IV.

This Court notes the Applicant filed this post-conviction relief application more than 24 years after he pled guilty. The Respondent now argues 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).

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." Id. at 283, 277 S.E.2d at 890-91 (citation omitted).

This Court finds the Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is unavailable and it is doubtful that plea counsel would have files or a memory of his representation of the Applicant. If the Applicant had sought post-conviction relief within a reasonable time after his guilty plea, these issues would not exist. Therefore, this application is summarily dismissed based on the Applicant's lack of diligence in processing his claim for relief.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter 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 by filing any reasons he may have with the Clerk of Court for Greenville

A handwritten signature in black ink, appearing to be the initials 'JW' with a stylized flourish.

County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 10 day of Dec., 2014.



---

Letitia H. Verdin  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

\_\_\_\_\_

AARON BRYANT KEYS,

Applicant.

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_

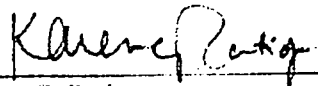
**CERTIFICATE OF SERVICE**

\_\_\_\_\_

The undersigned hereby certifies that a true copy of the **Conditional Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

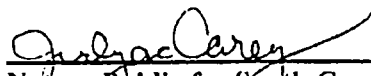
Aaron Bryant Keys, 12860-171  
Edgefield FCI  
Post Office Box 725  
Edgefield SC 29824

This 31st day of December, 2014.



\_\_\_\_\_  
Karen C. Ratigan  
Senior Assistant Deputy Attorney General  
Attorney for Respondent

SWORN to before me this 31st day of December, 2014.

  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: May 14, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Aaron Bryant Keys, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2014-CP-23-4305

**FINAL ORDER OF DISMISSAL**

FILED-CITIZEN OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2015 JUN 29 PM 4 17

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2014. The Respondent made its return on December 4, 2014, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the doctrine of laches.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Letitia H. Verdin issued a Conditional Order of Dismissal signed December 10, 2014 and filed December 23, 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 a Certificate of Service dated December 31, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant at the Edgefield Federal Correctional Institution.

In a document captioned "Applicant's Motion in Opposition to Respondent's 'Return Motion to Dismiss'" and accompanied by a certificate of service dated December 9, 2014, the

1  
*ABS*

Applicant argues his second-degree burglary indictment was illegal. The Applicant argues the State's return did not address his contention that there were no "prior convictions to trigger the charge of 2nd Degree Burglary." The Applicant argues there were due process and ex post facto violations related to the second-degree burglary charge. The Applicant argues his guilty plea was involuntary.

In a letter to the Greenville County Clerk of Court dated January 6, 2015, the Applicant references his "Applicant's Motion in Opposition to Respondent's 'Return Motion to Dismiss.'" The Applicant also cited Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) and stated "his case is premised on a Denial of Due Process and his guilty plea was not voluntary and knowing, simply stated Applicant did not have the two prior convictions to be legally charged and convicted of a first or second degree burglary."

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings. This Court finds this matter must be dismissed based upon the expiration of the statute of limitations. The Uniform Post-Conviction Procedure Act specifically states the statute of limitations for the filing of a PCR application is "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." S.C. Code § 17-27-45(a) (Supp. 2003) (emphasis added). Therefore, as the Applicant pled guilty on June 22, 1990 and did not file an appeal, the one-year time limit expired many years before this PCR application was filed on August 4, 2014. See id.

This Court finds the Applicant's claim that the plea court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice

2  
AS

documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds both that the indictment for second-degree burglary (1990-GS-23-4066) was adequate to provide notice of the charge the Applicant was facing and that the Applicant waived presentment of this charge to the Greenville County Grand Jury. This Court further notes that a charge of second-degree burglary can be made without the defendant having prior burglary convictions. S.C. Code Ann. § 16-11-312.

**IT IS THEREFORE ORDERED** that this PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**AND IT IS SO ORDERED** this 28 day of JAN, 2015.



Robin B. Stilwell  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.