

(20121073) LA

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26- 1814

Raymond E. Chestnut, 13465-171)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**CONDITIONAL ORDER
OF DISMISSAL**

HORRY COUNTY
12 MAY -3 PM 1:37
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2012. Respondent made its Return on April 20, 2012, requesting summary dismissal of the matter. This Court also has before it the records of the Horry County Clerk of Court regarding the subject convictions.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is currently incarcerated in the Federal Bureau of Prisons. James Galmore, Esquire, represented Applicant. Applicant waived presentment to the July 2004 term of the Horry County Grand Jury for Assault with Intent to Kill (AWIK) (2004-GS-26-2652). On August 3, 2004, the Applicant pled guilty to Assault High and Aggravated Nature (AHAN). The Honorable Jackson V. Gregory sentenced Applicant to three years imprisonment suspended upon service of 181 days, plus three years probation. Applicant did not appeal the conviction or sentence.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1. "denied the right of a preliminary hearing"

10/23
[Signature]

2. "victim was not assaulted"
3. "denied fast and speedy trial."

Applicant seeks "sentence and conviction overturned immediately" as a result of this proceeding.

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations.

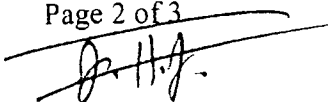
Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

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's conviction was August 3, 2004. This Application was filed on March 6, 2012, which was well beyond the time the statutory filing period 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 PCR 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." Therefore, the Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

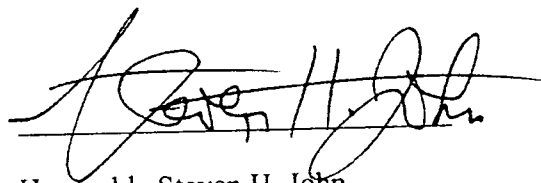
A handwritten signature in black ink, appearing to be "D. H. J.", is written over a horizontal line.

CONCLUSION

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 him to show why this Order should not become final by filing any reasons he may have with the Horry County Clerk of Court, 1301 2d Avenue, Conway, SC 29526, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

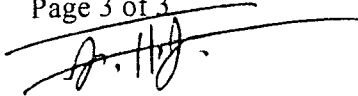
AND IT IS SO ORDERED this

25th day of April, 2012.
Conway, S.C.



Honorable Steven H. John
Administrative Judge
15th Circuit

Conway, South Carolina.



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Raymond Chestnut,)
)
Applicant,)

Case No. 2012-CP-26-1814

v.)

ORDER

State of South Carolina,)
)
Respondent.)
_____)

19 OCT -3 PM 1:39
CLERK OF COURT
HARRIS COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2012. The State made its Return and Motion to Dismiss on April 24, 2012, requesting that the Application be summarily dismissed as untimely. Pursuant to this request, the Court reviewed the pleadings in this matter and all of the records attached thereto. This Court issued a Conditional Order of Dismissal, filed on May 3, 2012, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order to show why the dismissal should not become final.

Applicant filed a *pro se* objection to the conditional order on May 30, 2012. Subsequently, the Court appointed counsel to represent Applicant on April 9, 2013. The court also issued an order on April 24, 2013, giving newly appointed counsel an opportunity to respond to the conditional order. Counsel filed a timely reply to the conditional order.

In his reply, Applicant (through counsel) asserts he is entitled to a direct appeal from the underlying conviction. The Court agrees that an assertion a defendant did not freely and voluntarily waive his right to a direct appeal is an exception to the statute of limitations. See

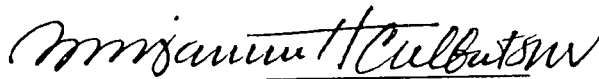
White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). Therefore, Applicant is entitled to a hearing on the issue of whether he is entitled to a direct appeal.

As to Applicant's other claims, the Court finds that Applicant has not shown a sufficient reason why the allegations are not untimely and why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that this matter shall be set for a hearing solely to determine whether Applicant is entitled to a direct appeal from the underlying conviction. The Court notes that it has, by separate order dated this same day, merged a second PCR application (2013-CP-26-3195) with this case. Accordingly, the hearing on this matter shall address appeals from all convictions dated August 3, 2004 (04-GS-26 2651 and 04-GS-26-2652).

IT IS FURTHER ORDERED that the hearing on this matter shall be held the same day as the hearing on all of Applicant's other pending applications (2012-CP-26-1815, 2012-CP-26-1816, 2012-CP-26-2915, 2012-CP-26-2916, and 2012-CP-26-2917). These hearings should be scheduled for the next available term of court for PCR cases in the Fifteenth Judicial Circuit.

IT IS SO ORDERED THIS 25th DAY OF Sept., 2013.



THE HONORABLE BENJAMIN H. CULBERTSON
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Conway, South Carolina