

LAW OFFICE OF BRIAN P. JOHNSON, LLC

P. 864.331.1630
F. 864.672.4009
www.brianpjohnsonlaw.com

522 North Church Street
Greenville, SC 29601
brian@brianpjohnsonlaw.com

May 7, 2015

VIA U.S. POSTAL

RECEIVED

MAY 12 2015

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

Re: James Spurgeon vs. State of South Carolina
Case No.: 2013-CP-23-1426

Dear Supreme Court Clerk:

I am writing to you regarding the above referenced case. Please find enclosed the Notice of Appeal, Proof of Service, and Order of Dismissal with Prejudice.

If you wish to discuss the foregoing or need additional information please contact me at 864-331-1630.

Thank you.

Sincerely,



Brian P. Johnson

BPJ/lf

cc: Karen Ratigan, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE D. GARRISON HILL Miller ✓

Case No.: 2014-CP-23-5942

RECEIVED

MAY 12 2015

S.C. Supreme Court

JAMES SPURGEON,)
)
 PETITIONER,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

NOTICE OF APPEAL

The Petitioner, James Spurgeon, hereby appeals the Honorable Edward W. Miller's April 29, 2014, order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner
SC Bar: 73996

Date: May 7, 2015
Other counsel of record: Karen Ratigan
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE D. GARRISON HILL

RECEIVED

Case No.: 2014-CP-23-5942

MAY 12 2015

S.C. Supreme Court

JAMES SPURGEON,)
)
 PETITIONER,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

PROOF OF SERVICE

I, Brian P. Johnson, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner
SC BAR: 73996

Greenville, SC
May 7, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2305942

FILED-CLERK OF COURT
GREENVILLE, SC.
PAUL B. WICKENSIMER
2015 MAY 5 PM 11:27

James Spurgeon vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other: _____
 Rule 12(b), SCRCP; Rule 41(a),
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRCP; Bankruptcy:
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - Edward W. Miller

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Brian P. Johnson 522 North Church Street
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 James Spurgeon, Jr.,)
 S.C.D.C. No. 70122,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-5942

**ORDER OF DISMISSAL
 WITH PREJUDICE**

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIME
 2015 MAY 5 AM 11 20
 ENTERED COMPUTER

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 30, 2014. The Respondent submitted a return and motion to dismiss dated January 23, 2015 and filed an amended return and motion to dismiss on April 20, 2015. A hearing was convened at the Greenville County Courthouse on April 21, 2015, at which time the Applicant was present and represented by Brian P. Johnson, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss on two grounds: (1) the expiration of the statute of limitations and (2) the doctrine of laches.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 1987 term of the Greenville County Grand Jury for murder (1987-GS-23-5180). The Applicant was represented Robert Ray, Esquire.

On September 24, 1987, the Applicant pled guilty. He was sentenced by the Honorable C. Victor Pyle, Jr. to life imprisonment. The Applicant did not file an appeal.

II. ALLEGATIONS

In his PCR application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Newly discovered evidence.
 - a. “[W]as not advised by the trial court during sentecing [sic] that if the Applicant does plea guilty to this 1987 murder the Applicant would receive life without parole, and after he plead guilty and several years later Applicant was ineligible for parole.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject conviction, the Applicant’s records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

A. Statute of Limitations

This Court finds this PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). 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 South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty on September 24, 1987. This application was filed on October 30, 2014, which was several years after the statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a

timely manner. This Court finds the PCR application must be dismissed because the Applicant failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations.

B. Laches

This Court notes the Applicant filed this application twenty-seven years after he pled guilty. This Court finds the doctrine of laches bars the Applicant from raising the allegations in his PCR application.

Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent a post-conviction relief 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 in filing a PCR application has greatly prejudiced the Respondent. A transcript of the Applicant's guilty plea is no longer available. In addition, it is doubtful either that plea counsel has retained his file in this case or has any memory of his representation of the Applicant. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Accordingly, this Court finds the PCR application must be dismissed based on the Applicant's lack of diligence in processing his claim for relief.

C. Newly-discovered evidence

This Court notes the Applicant argued newly-discovered evidence in his PCR application. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added).

While the Applicant argues newly-discovered evidence in his PCR application, he provided no actual evidence to this Court. The mere statement that he “was not advised by the trial court” of his parole eligibility does not amount to newly-discovered evidence. See id.

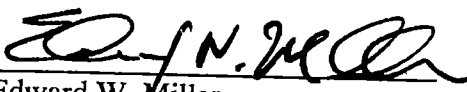
IV. CONCLUSION

Based on the records, pleadings, and arguments of counsel, this Court finds the Respondent’s motion to dismiss must be granted. 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 the 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.

IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 29 day of April, 2015.

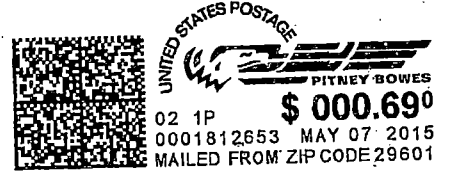


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

Law Office of Brian P. Johnson

522 North Church Street
Greenville, SC 29601



Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

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