

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Ernest Battle, #165247)
Applicant,)

2012-CP-10-3332

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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JUDICIAL ASSISTANT
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 22, 2012. The Respondent (the State) made its Return and Motion to Dismiss on September 24, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Roger Young issued a Conditional Order of Dismissal dated October 1, 2012, 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 October 17, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant. The Applicant made a timely response dated October 29, 2012.

In the document titled "Reply and Objection to State's Conditional Order of Dismissal," the Applicant argues his application is timely filed as the one-year statute of limitations does not apply in determining whether he waived his right to direct appeal due to counsel's alleged ineffectiveness.

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This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

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." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

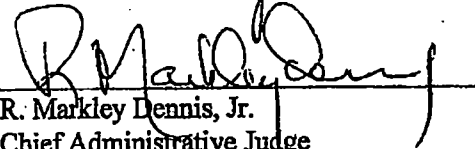
This Court finds while the Applicant is arguably correct in his assertion that his application would not be barred by the statute of limitations on the issue of whether he knowingly and intelligently waived his right to direct appeal, he fails to acknowledge that his application would certainly be barred by laches, as argued by the State in its Return and Motion to Dismiss. Applicant pled guilty to two counts of possession of marijuana and one count of possession of a weapon on

August 9, 1979. (emphasis added). He most certainly could have raised this issue within the last 30 years, however, Applicant chose to wait until May 22, 2012, after this conviction was used to enhance his current sentence, to challenge this issue of whether he waived his right to direct appeal. Applicant has failed to show why or how *laches* is inapplicable. In fact, this case is exactly why the doctrine of laches was created. Applicant cannot sit on his hands for 30 years and then reasonably expect the State to defend against his claim.

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

This Court hereby notifies 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 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15th day of May, 2015.


R. Markley Dennis, Jr.
Chief Administrative Judge
Ninth Judicial Circuit

Thomson-Corner South Carolina.

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STATE OF SOUTH CAROLINA)
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2012-CP-10-3332

BY JULIE J. ARMSTRONG
CLERK OF COURT
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FILED

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 22, 2012. The Respondent made its Return and Motion to Dismiss on September 24, 2012.

PROCEDURAL HISTORY

The Court has before it the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The records indicate the Applicant is presently confined in the South Carolina Department of Corrections for separate offenses, pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the August 1979 term of the Charleston County Grand Jury for two (2) counts of possession of unlawful drugs - marijuana (1979-GS-10-1111,-1112), and one (1) count of unlawful possession of a weapon (1979-GS-10-704). Applicant was represented by Aaron Harvey.

On August 9, 1979, the Applicant pled guilty as indicted. Applicant was sentenced under the Youthful Offender Act 5(c) by the Honorable Kylde Robinson to confinement for a period of

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three (3) years for each offense. The sentences were to be served concurrently. The Applicant did not appeal his convictions or sentences.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "1979 sentence and convictions were excessive and unlawful."
2. "1979 sentences were barred by double jeopardy."
3. "Unlawful enhancement."
4. "Abuse of Discretion."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that the Application for Post-Conviction Relief must 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 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 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). 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

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pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

The Applicant pled guilty on August 9, 1979, causing any subsequent application for post-conviction relief to be due before August 9, 1980. However, the application for post-conviction relief was not filed until May 22, 2012, over thirty (30) years beyond the time allotted.

This Court further finds that this application is barred by the doctrine of laches. The Applicant's failure to file this Application in a timely matter would result in prejudice to the Respondent. Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:


When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by an further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

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 with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

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[Signature]

Office of the Attorney General
Attn: Ashleigh R. Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 1st day of Oct., 2012.



The Honorable Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

Charleston, South Carolina.

4 of 4
